

PROJECT AGREEMENT

Execution Version

THE REGINA BYPASS PROJECT

CONFIDENTIAL

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Schedule 10	-	Works Report Requirements
Schedule 11	-	Project Co Proposal Extracts
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Schedule 21	-	Handback Procedure
Schedule 22	-	Dispute Resolution Procedure
Schedule 23	-	INTENTIONALLY DELETED
Schedule 24	-	Insurance Requirements
Schedule 25	-	Insurance Trust Agreement
Schedule 26	-	Refinancing
Schedule 27	-	Standby Letter of Credit
Schedule 28	-	O&M Interim Services Agreement
Schedule 29	-	Additional Works and Third Party Works
Schedule 30	-	Construction Period Performance

THIS PROJECT AGREEMENT is made as of the 29th day of July, 2015

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN as represented by the Minister of Highways and Infrastructure (the “**Ministry**”)

AND:

SGTP HIGHWAY BYPASS LIMITED PARTNERSHIP, by its general partner, SGTP Highway Bypass GP Inc. (“**Project Co**”)

WHEREAS:

- A. The Ministry wishes to procure the Bypass, consisting of a freeflow highway corridor through the Regina Region. The Bypass includes approximately 58 km of 4-lane highway and service roads along with a number of interchanges and intersections.
- B. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing and maintenance of the Bypass (the “**Project**”).
- C. The Ministry and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. The construction of the Bypass will have a positive impact on the Province of Saskatchewan by (i) facilitating economic growth in the Province by eliminating a key transportation bottleneck and creating efficient passenger and goods movement; (ii) addressing growing commuter traffic that is facing increased congestion as a result of economic growth; (iii) improving safety and promoting a more liveable community, in an area where collisions, noise and air pollution are currently concentrated in an urban environment; (iv) providing better access to the Global Transportation Hub to the west of Regina and to other key logistics and employment centres, where free-flow truck access is essential for continued growth of these major economic drivers; (v) improving the efficiency and safety of travel on the National Highway System; (vi) facilitating connections with trade routes which will support the continued development of a regional hub for the movement of goods.
- E. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that the Ministry and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions and Interpretation**

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 - Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement.

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Subcontractors' Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Project Co Information
Schedule 8	- Key Individuals
Schedule 9	- Review Procedure
Schedule 10	- Works Report Requirements
Schedule 11	- Project Co Proposal Extracts
Schedule 12	- Communications Protocol
Schedule 13	- Record Provisions
Schedule 14	- Integrated Management System
Schedule 15	- Technical Requirements
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Schedule 15-3	- Technical Requirements – OM&R and Handback
Schedule 16	- Commissioning
Schedule 17	- Title and Title Encumbrances
Schedule 18	- Payment Mechanism
Schedule 19	- Variation Procedure
Schedule 20	- Compensation on Termination
Schedule 21	- Handback Procedure
Schedule 22	- Dispute Resolution Procedure
Schedule 23	- INTENTIONALLY DELETED
Schedule 24	- Insurance Requirements
Schedule 25	- Insurance Trust Agreement
Schedule 26	- Refinancing
Schedule 27	- Standby Letter of Credit
Schedule 28	- O&M Interim Services Agreement
Schedule 29	- Additional Works and Third Party Works
Schedule 30	- Construction Period Performance

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.

- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, the Ministry or anyone else (including anyone pursuant to Schedule 22 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the discretion of the Ministry, no consent, approval or satisfaction of the Ministry or the Ministry Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 22 Dispute Resolution Procedure;
 - (vi) Schedule 18 Payment Mechanism;
 - (vii) Schedule 15 Technical Requirements;
 - (viii) Schedule 24 Insurance Requirements;
 - (ix) Schedule 19 Variation Procedure;
 - (x) Schedule 9 Review Procedure;
 - (xi) Schedule 16 Commissioning;
 - (xii) Schedule 14 Integrated Management System;

- (xiii) Schedule 26 Refinancing;
 - (xiv) Schedule 20 Compensation on Termination;
 - (xv) Schedule 13 Record Provisions;
 - (xvi) Schedule 21 Handback Procedure;
 - (xvii) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xviii) Schedule 11 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or the Ministry, upon discovery of same, shall immediately give notice to the Ministry Representative. The Ministry Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) The Ministry and Project Co shall comply with the determination of the Ministry Representative pursuant to this Section 1.2 unless the Ministry or Project Co disputes the decision of the Ministry Representative in which event such Dispute may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

1.3 Conflict of Documents

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 14 to 24, 27 to 29, 30, 33, 35 to 38 and 50 to 63, and Schedules 1 to 3, 9 to 11, 13, 16, 18, 19, 22, 25 to 27 and 29 will come into effect on Commercial Close. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) On Commercial Close, Project Co shall deliver, or cause to be delivered, to the Ministry one or more irrevocable standby letter(s) of credit (the "**Standby Letter of Credit**") in the aggregate amount of _____ substantially in the form of Schedule 27 - Standby Letter of Credit.

- (b) Unless the Standby Letter of Credit is drawn by the Ministry in accordance with the provisions of this Project Agreement, the Ministry shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to the Ministry drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to the Ministry the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) the Ministry shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to the Ministry any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by the Ministry of its obligations under Section 2.3(b)(ii)) and the Ministry does not waive such requirement, the Ministry will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty, but represent a genuine and reasonable pre-estimate of the damages that the Ministry will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the Ministry as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not the Ministry incurs or mitigates its damages, and that the Ministry shall not have any obligation to mitigate any such damages.
- (d) If the Ministry fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, the Ministry may in its discretion either:

- (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
- (ii) direct Project Co to assign to the Ministry and the Ministry will assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences and Approvals; and
 - (B) those contracts between Project Co and any Project Co Party which the Ministry elects to be assigned.
- (c) If the Ministry exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Honorarium plus any applicable GST and PST pursuant to Section 11.3.2 of the Request for Proposals. The Ministry's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Ministry, that such fee represents full and final satisfaction of any obligation or liability of the Ministry to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to the Ministry, except as otherwise provided in this Project Agreement.

3.2 Early Works Agreement

- (a) The Parties acknowledge and agree that the Early Works Agreement terminated effective as of Financial Close and that this Project Agreement supersedes the Early Works Agreement in its entirety. All activities undertaken pursuant to the Early Works Agreement prior to Financial Close are deemed to have been undertaken by Project Co as Works pursuant to this Project Agreement, notwithstanding that the Early Works may have been executed by Regina Bypass Design Builders, an unincorporated joint venture consisting of Carmacks Enterprises Ltd., Parsons Canada, Ltd., Graham Infrastructure LP and VINCI Infrastructure Canada Limited (the "**Early Works Contractor**") and not directly by Project Co. Project Co accepts and assumes the risk, responsibility and liability for and in respect of such Early Works in accordance with the provisions of this Project Agreement.
- (b) Neither Project Co nor the Early Works Contractor nor the Ministry or any other party to the Early Works Agreement shall be entitled to make a claim against each other or against any Project Co Party or any Province Person under or in connection with the Early Works Agreement (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for

extensions of time or for additional payments, unless such claim is permitted under this Project Agreement.

- (c) Any dispute in connection with or arising out of the Early Works Agreement and existing at Financial Close shall, unless otherwise agreed in writing by the Parties, be resolved in accordance with Section 22 – Dispute Resolution Procedure.

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Project Co acknowledges that the Ministry: (i) may from time to time develop, or permit the development of, commercial and other opportunities on or associated with the Bypass and on the Lands (including, for greater certainty, the erection of billboards and other forms of advertising on the Bypass and the granting of naming rights associated with the Bypass) (“**Business Opportunities**”); (ii) reserves the right to all Business Opportunities; and (iii) may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.
- (b) To the extent that the development of a Business Opportunity materially adversely interferes with Project Co’s licence rights hereunder or materially adversely interferes with Project Co’s ability to perform the Project Operations or increases Project Co’s costs of performing the Project Operations, such development shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.
- (c) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for the Ministry’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. The Ministry may accept any such proposal in its discretion and subject to such terms and conditions as the Ministry may require.
- (d) Notwithstanding that Project Co has proposed a Business Opportunity to the Ministry for its consideration, Project Co acknowledges and agrees that:
- (i) the Ministry reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party;
 - (ii) the Ministry may initiate a separate procurement process for the development of such Business Opportunity; and
 - (iii) Project Co shall not be entitled to receive any payment or compensation from the Ministry (in any form) on the basis that Project Co proposed such Business Opportunity to the Ministry, even if the Ministry proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to the Ministry that as of Commercial Close:

- (i) Project Co is a Limited Partnership formed and validly existing under the laws of the Province of Saskatchewan, is in good standing with the Saskatchewan Corporate Registry with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
- (ii) SGTP Highway Bypass GP Inc. is a corporation formed and validly existing under the laws of the Province of Saskatchewan, is in good standing with the Saskatchewan Corporate Registry with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as the general partner of Project Co;
- (iii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, maintenance and rehabilitation of highway projects similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
- (iv) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (v) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform its obligations under this Project Agreement;
- (vi) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vii) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

- (viii) no Project Co Event of Default has occurred and is continuing;
- (ix) all of the information regarding Project Co set out in Schedule 7 – Project Co Information is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co’s knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xi) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of the Ministry, and, to Project Co’s knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xii) Project Co is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its GST registration number is _____ ;
- (xiv) Project Co is registered with the Ministry of Finance for purposes of PST and its PST Vendor’s Licence number is _____ ;
- (xv) the Scheduled Substantial Completion Date and the Scheduled Phase One Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement; and
- (xvi) Project Co is not a Non-Resident; and
- (xvii) to the knowledge of Project Co, after due inquiry, no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.

5.2 Ministry Representations and Warranties

- (a) The Ministry represents and warrants to Project Co that as of Commercial Close:
 - (i) subject to Section 5.2(a)(v)(C), (D), (E) and (F), the Ministry has the requisite power, authority and capacity to enter into, execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

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- (ii) the Ministry has obtained all necessary approvals to enter into, and perform its obligations under, this Project Agreement;
 - (iii) this Project Agreement has been duly authorized, executed, and delivered by the Ministry and constitutes a legal, valid, and binding obligation of the Ministry, enforceable against the Ministry in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Ministry and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against the Ministry or its property;
 - (D) Section 33 of *The Financial Administration Act*, 1993 (Saskatchewan);
 - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 46 of *The Financial Administration Act*, 1993 (Saskatchewan); and
 - (F) the powers of the Crown to effect set offs against amounts owing by the Crown pursuant to Section 42 of *The Financial Administration Act*, 1993 (Saskatchewan);
 - (iv) the execution, delivery, and performance by the Ministry of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) any Applicable Law; or
 - (B) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;
 - (v) no Ministry Event of Default has occurred and is continuing;
 - (vi) the Ministry has rights of use and access to, on and over the Lands, the Conveyed Lands and the Bypass or has the requisite power (except, without prejudice to Project Co's rights under Sections 14.1(a)(ii), 39.1(a)(ii), 40.1(a), 45.1(a)(ii), in respect of those Lands identified as Reference Nos. 025, 026 and 027 in Appendix B to Schedule 17) to obtain such rights that are sufficient to enable the Ministry to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1; and
 - (vii) Her Majesty the Queen in Right of the Province of Saskatchewan is (or, in the case of the After-Acquired Lands, will be prior to the grant of licence rights over the After-Acquired

Lands as contemplated in Section 14) the registered owner of, and has (or, in the case of the After-Acquired Lands, will have prior to the grant of licence rights over the After-Acquired Lands as contemplated in Section 14) good title in fee simple to, the Lands.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3 and 16.4, neither the Ministry nor any Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from the Ministry or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3 and 16.4:
- (i) neither the Ministry nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither the Ministry nor any Province Person warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither the Ministry nor any Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Project Co acknowledges and confirms that:
- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and

- (ii) except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3 and 16.4, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against the Ministry or any Province Person (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
- (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient,
- nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

6.4 Technical Reports

- (a) The Ministry agrees that, if at Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by the Ministry or any MHI Party, or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of the Ministry, incorrect or there is relevant information in the possession or control of the Ministry that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.
- (b) For purposes of Section 6.4(a), "to the actual knowledge of the Ministry" means to the actual knowledge of the Deputy Minister of Highways and Infrastructure and the president and chief executive officer of SaskBuilds.
- (c) Notwithstanding any other provision of this Agreement, if a delay is caused to the progress of the Works or additional costs are incurred by Project Co in performing the Works (which, in either case would not otherwise have been experienced or incurred by Project Co in performing its obligations under this Project Agreement) as a direct result of a factual error (as at the currency date of the relevant document) in any of the geotechnical investigation data and test results provided in borehole and test pit logs provided in the Golder Report upon which Project Co has reasonably and in accordance with Good Industry Practice relied in the design and construction of the Works, then the delay or additional costs incurred by Project Co, to the extent they could not reasonably have been avoided or mitigated by Project Co shall, subject to and in accordance with Schedule 19 – Variation Procedure, result in a Variation. For greater certainty, Project Co shall not be entitled to a Variation under this Section 6.4(c):
- (i) for any delay or additional costs that result from any interpretation of or extrapolation from or assumption made on the basis of any such geotechnical information, or from any action taken or omitted on the basis of any such interpretation, extrapolation or assumption;
 - (ii) if it was not in all the relevant circumstances and having regard to any other information known to Project Co at the relevant time reasonable in accordance with Good Industry

Practice for Project Co to rely on the information containing the factual error or to rely on such information without further investigation or site examination; or

- (iii) if Project Co in fact carried out any further investigation or site examination with respect to the subject matter of the information containing the factual error.

Any Dispute between the Ministry and Project Co regarding the application of this Section 6.4(c) may be referred for resolution pursuant to the Dispute Resolution Procedure.

7. PROJECT DOCUMENTS

7.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to the Ministry.

7.2 Ancillary Documents

- (a) Project Co shall not:
 - (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 31.3, 44.5, 58.3 and 59.2 or except to prevent or to cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of the Ministry, whether actual or potential;
 - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of the Ministry, whether actual or potential; or
 - (iv) enter into, or permit the entry by any other person into, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of the Ministry, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of the Ministry, whether actual or potential. In the event of termination or agreement to the termination of all or part of

any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 58.3.

7.3 Changes to Lending Agreements and Refinancing

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of the Ministry, whether actual or potential, unless:
- (i) such action is a Permitted Borrowing; or
 - (ii) such action is a Refinancing, other than a Mandatory Refinancing, effected in accordance with the provisions of Schedule 26 - Refinancing.

7.4 Compliance with Lending Agreements

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

8. MINISTRY RESPONSIBILITIES

8.1 General

- (a) The Ministry shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law; and
 - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that the Ministry shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) During the Operational Term, the predominant uses of the Bypass to be permitted by the Ministry shall be as a public roadway and for ancillary uses compatible therewith.
- (c) The Ministry shall, and shall cause all the MHI Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) The Ministry shall, at the expense of Project Co, take such reasonable steps as Project Co may request to facilitate access for Project Co to lands not forming part of the Lands or the Additional Lands to the extent Project Co may reasonably require to perform the Project Operations,

provided that Project Co has demonstrated, to the reasonable satisfaction of the Ministry, that it has not been able to gain such access through the use of its own commercially reasonable efforts.

- (e) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of the Ministry or any Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude the Ministry or any designate appointed pursuant to Section 62.1 of this Project Agreement from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that, subject to Section 37.1(b), it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of the Ministry or any designate appointed pursuant to Section 62.1 of this Project Agreement from time to time.

8.2 Ministry Obligations: Permits, Licences and Approvals

- (a) The Ministry shall, at its own cost and risk:
- (i) obtain on or before Financial Close maintain, and, as applicable, renew all Ministry Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) The Ministry shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as the Ministry may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that the Ministry shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of the Ministry or any MHI Party. For greater certainty, the Ministry shall not be obligated to:
- (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences and Approvals; and
 - (ii) automatically grant Project Co Permits, Licences and Approvals for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co for such Project Co Permits, Licences and Approvals.
- (c) Notwithstanding the provisions of Section 9.4(a)(i), the Ministry shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to the Bypass which can only be effected by the Ministry pursuant to *The Highways and Transportation Act*, 1997 (Saskatchewan), as amended or *The Traffic Safety Act* (Saskatchewan), as amended, provided that Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and technical or administrative assistance as the Ministry may request and as Project Co may reasonably be able to provide to enable the Ministry to effect such requirements.

9. PROJECT CO RESPONSIBILITIES**9.1 Other Business**

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of the Ministry, in its discretion.

9.2 General

- (a) Project Co shall, at its own cost and risk:
- (i) observe all provisions of this Project Agreement in compliance with Applicable Law;
 - (ii) perform all Project Operations:
 - (A) in compliance with Applicable Law;
 - (B) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
 - (C) so as to satisfy the Technical Requirements;
 - (D) in accordance with Good Industry Practice;
 - (E) in a manner consistent with the Integrated Management System, Management Plans and the Project Co Proposal Extracts;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of persons and property;
 - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of the Ministry or any Province Persons to comply with Applicable Law;
 - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities; and
 - (J) in accordance with all other terms of this Project Agreement; and
 - (iii) cooperate with the Ministry in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of the Ministry's obligations under this Project Agreement.

9.3 Project Co Parties

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the engagement of any Project Co Party, and Project Co shall cause each Project Co Party, to the

extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

9.4 Project Co Obligations: Permits, Licences and Approvals

- (a) Project Co shall, at its own cost and risk:
 - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on the Ministry or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences and Approvals without the prior written consent of the Ministry, provided that neither the Ministry nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. The Ministry shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on the Ministry or any Province Person by the requirements of any Project Co Permit, Licence or Approval obtained with the Ministry's consent under this Section 9.4(b).
- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Ministry may request and as Project Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable the Ministry to obtain, maintain or renew any Ministry Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of the Ministry to obtain any Ministry Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.

9.5 Safety and Security

- (a) Project Co shall:
 - (i) comply with the Occupational Health and Safety Management Plan;
 - (ii) keep the Lands in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Lands and in the immediate vicinity of the Lands;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to maintain and secure the Site to prevent access prior to Substantial Completion to the Site, and following Substantial Completion to the Lands, of any persons or creatures not entitled to be there;

- (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including without limitation, *The Saskatchewan Employment Act* (Saskatchewan), and all regulations thereto;
- (v) with respect to the Works, perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify the Ministry and each other Province Person against any and all of the liabilities of the “prime contractor”, under *The Saskatchewan Employment Act* (Saskatchewan), and all regulations thereto; and
- (vi) provide the Ministry with a clearance letter from WCB or any successor thereto once every 90 days from Financial Close until Final Completion, and from Final Completion until the Termination Date, at the request of the Ministry Representative from time to time.

9.6 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, the Ministry shall not be responsible for the presence on or around the Lands, or any other interference affecting the Lands, the Bypass Infrastructure or the Project Operations, of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Lands shall not be a breach of the obligation of the Ministry to grant licence rights of use and access to Project Co on and over the Lands pursuant to Section 14, nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co throughout the Project Term (to the extent same is not otherwise the responsibility of the Police Service). If at any time during the Project Term any part of the Site (and following Substantial Completion, the Lands) is occupied, or access to the Site (and following Substantial Completion, the Lands) is prevented or interfered with, by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the Ministry Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Lands, provided that if Project Co does so elect to exercise any such legal remedy, Project Co shall give the Ministry Representative not less than 24 hours notice prior to commencing any legal proceeding for that purpose (except in a case of Emergency, danger to persons or expected or imminent material destruction or expected or imminent material damage to property where, in such circumstances, such notice may be given to the Ministry less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Ministry Representative as to the status of any such proceeding in reasonable detail and at reasonable intervals, and provided further that:
 - (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and
 - (ii) Project Co shall not by virtue of this Section 9.6(b) be prevented from entering into *bona fide* settlements of claims brought against it by Protesters or Trespassers which provide

for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.

- (c) Project Co may request the assistance of the Ministry (at the cost of Project Co) to remove Protesters or Trespassers where Project Co demonstrates to the Ministry's reasonable satisfaction that:
- (i) it is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works that Project Co is unable to mitigate.

Following such request, the Ministry shall notify Project Co whether the Ministry can lawfully provide any assistance in relation to the removal of the Protesters or Trespassers that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, the Ministry shall provide such assistance (at the cost of Project Co) to the extent it is, in the discretion of the Ministry, reasonable and appropriate in the circumstances to do so.

- (d) If at any time Project Co establishes that:
- (i) Protesters who are protesting or demonstrating against the carrying out of any part of the Project Operations (including the construction of the Works) or against the construction and/or operation of roads in general continue to occupy, or prevent access to, any part of the Bypass or the Lands for a period of more than seven (7) days after Project Co has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a court of first instance and to enforce any injunction or other remedy granted by such court to remove them (provided that for this purpose Project Co may but will not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) such continued occupancy is preventing Project Co from performing any material element of the Project Operations and, as a direct result thereof, Project Co has suffered Direct Losses which otherwise would not have been suffered but for such prevention, or Project Co is unable to mitigate the effect of such prevention on the performance of the Project Operations without incurring costs or expenses in addition to those it would otherwise have incurred in performing its obligations under this Agreement,

and provided that the protest or demonstration does not relate to and is not attributable to: (i) any failure of Project Co to perform the Project Operations in accordance with the requirements of this Agreement, or (ii) any other act or omission of Project Co or any Project Co Party or any of their respective agents, contractors or subcontractors of any tier or employees of any of them (other than the performance of the Project Operations in the normal course in accordance with the requirements of this Agreement), then, subject to compliance by Project Co with its obligations under Section 42.3, the Ministry will (in addition to any amounts payable to Project Co pursuant to Section 42.2), reimburse Project Co, if and to the extent that Project Co has incurred out-of-pocket costs and/or expenses pursuant to Section 9.6(d)(ii) which aggregate more than (index linked) and which are not covered by insurance; provided, however, that the first (index linked) of such uninsured out-of-pocket costs and expenses incurred by Project Co in respect of

each such occurrence of protest will be excluded from the calculation of any reimbursement by the Ministry pursuant to this Section 9.6(d). Any Dispute between Project Co and the Ministry as to whether the provisions of this Section 9.6(d) are applicable or as to the amount of any such out-of-pocket costs or expenses incurred by Project Co will be referred for determination pursuant to the Dispute Resolution Procedure.

9.7 Additional Works and Third Party Works

- (a) Project Co and the Ministry shall each comply with the requirements of Schedule 29 - Additional Works and Third Party Works.

9.8 Additional Lands

- (a) Subject to Section 9.8(b) and, except to the extent expressly required otherwise in Section 200.6.4 of Schedule 15-2 - Technical Requirements – Design and Construction, Project Co shall be required to construct the Works (other than Temporary Works) entirely within the Lands.
- (b) Subject to the prior written consent of the Ministry, in its discretion, Project Co may propose to construct a portion of the Works outside the Site on the following terms and conditions:
- (i) Project Co shall acquire fee simple ownership of the additional lands required for the construction of the Works (“**Additional Lands**”) at its own cost and expense;
 - (ii) Project Co hereby grants to the Ministry an option, exercisable upon 30 days prior written notice at any time before or after expiry of the Term or sooner termination of this Agreement, to purchase all or any part of such Additional Lands for a purchase price of \$1.00;
 - (iii) Project Co shall promptly notify the Ministry of any Additional Lands that it acquires, including the legal description of the lands;
 - (iv) Project Co shall enter into a formal option agreement for the Additional Lands in such form and on such terms and conditions as the Ministry may reasonably require; and
 - (v) Project Co shall not grant or assume any mortgage or other security interest in such Additional Lands.

9.9 Maintenance Facilities

- (a) Project Co may, at its option, and sole cost and expense, construct such maintenance facilities (the “**Maintenance Facilities**”) as it considers necessary for the purposes of storing supplies and equipment and otherwise for the purposes of performing the Project Operations. Such Maintenance Facilities shall not be situated on the Lands and, as between the Ministry and Project Co, Project Co shall be solely responsible to acquire any lands necessary for the construction of the Maintenance Facilities. For greater certainty, any lands acquired by Project Co for the purpose of any Maintenance Facility shall not be Additional Lands for the purposes of Section 9.8.
- (b) Project Co shall be solely responsible for the repair and maintenance of any Maintenance Facilities and, except to the extent included in the Phase One Milestone Payment, the Substantial

Completion Payment, or any Monthly Service Payment, shall not be entitled to any payment or other compensation in respect of the design, construction, repair or maintenance of any Maintenance Facilities and the Ministry shall have no liability or obligations whatsoever in respect thereof.

9.10 Environmental Matters

- (a) Project Co shall comply with the provisions of Section 300.2.10 of Schedule 15-2 - Technical Requirements – Design and Construction.

9.11 First Nations and Métis Procurement and Employment Opportunities

- (a) Project Co shall, not later than twenty (20) Business Days following Commercial Close, deliver to the Ministry Representative for the Ministry’s review and approval a draft First Nations and Métis Design and Construction engagement plan (the “**First Nations and Métis Bypass Project Engagement Plan**”) that describes how Project Co will, prior to Substantial Completion:
- (i) use commercially reasonable efforts to procure services relating to the Works from:
 - (A) First Nations and Métis individuals;
 - (B) First Nations- and Métis-controlled corporations or other like entities or organizations; and
 - (C) joint ventures that include First Nations- and Métis-controlled corporations or other like entities or organizations,provided such services are provided on a commercially competitive and timely basis;
 - (ii) explore ways to make apprenticeship programs available to First Nations and Métis individuals and to promote greater participation in such programs; and
 - (iii) explore other means of providing employment training to First Nations and Métis individuals; and
 - (iv) details on how Project Co intends to report on the outcomes related to the initiatives listed in this Section 9.11.
- (b) The Ministry Representative shall provide comments on the First Nations and Métis Bypass Project Engagement Plan within 15 Business Days of receipt of the plan. Project Co will, acting reasonably, take account of the Ministry Representative’s comments in developing the First Nations and Métis Bypass Project Engagement Plan and deliver to the Ministry Representative a revised plan (if applicable) within 15 Business Days of receiving the Ministry Representative’s comments. Project Co will implement the First Nations and Métis Bypass Project Engagement Plan as approved by the Ministry Representative.
- (c) Project Co shall, until Substantial Completion, report to the Ministry on a quarterly basis the results of the foregoing initiatives in sufficient detail (and in accordance with Section 9.11(a)(iv) as set out in the plan) to demonstrate compliance with this Section 9.11.

10. REPRESENTATIVES**10.1 The Ministry Representative**

- (a) The Ministry Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the Ministry Representative and such other functions and powers of the Ministry under this Project Agreement as the Ministry may notify Project Co from time to time.
- (b) The Ministry may, from time to time by written notice to Project Co, change the Ministry Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no Ministry Representative has been appointed, or when the Ministry Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Ministry Representative's functions under this Project Agreement, the Ministry shall perform or may, by written notice to Project Co, promptly appoint an alternative Ministry Representative to perform the functions which would otherwise be performed by the Ministry Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative Ministry Representative which is permitted by this Project Agreement as being authorized by the Ministry, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The Ministry Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the Ministry Representative which is authorized by this Project Agreement as being authorized by the Ministry, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of the Ministry.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to the Ministry, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that Project Co must seek the Ministry's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, the Ministry and the Ministry Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and the Ministry

and the Ministry Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, the Ministry and the Ministry Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and the Ministry and the Ministry Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the Ministry Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 8 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 8 - Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of the Ministry such involvement would have a material adverse effect on the Works.
- (b) The individuals who are critical to the performance of the OM&R Work are identified in Schedule 8 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the OM&R Work in the capacity set out in Schedule 8 - Key Individuals and, in particular, will not, for the duration of the OM&R Work, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of the Ministry, such involvement would have a material adverse effect on the OM&R Work.
- (c) If Project Co considers it necessary to replace any individual identified in Schedule 8 - Key Individuals, Project Co shall provide the Ministry with relevant information on the proposed replacement and shall consult with the Ministry before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 8 - Key Individuals without the prior written consent of the Ministry, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If the Ministry determines, acting reasonably, that it is in the best interests of the Ministry that any individual identified in Schedule 8 - Key Individuals be replaced, the Ministry shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide the Ministry with relevant information on the proposed replacement and shall consult with the Ministry before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 8 - Key Individuals without the prior written consent of the

Ministry, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
- (i) the Ministry Representative;
 - (ii) 1 representative appointed by SaskBuilds Corporation from time to time;
 - (iii) 3 representatives appointed by the Ministry from time to time; and
 - (iv) the following 2 representatives appointed by Project Co:
 - (A) the Project Co Representative; and
 - (B) 1 representative of the Construction Contractor.
- (b) The Independent Certifier shall be entitled, but not required, to attend meetings as a non-voting member of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) 1 of the representatives of the Ministry shall be the chairperson of the Works Committee.

11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Bypass Management Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
 - (ii) the Works Schedule;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any Integrated Management System issues, including quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by the Ministry or Project Co;

- (vii) any community and media relations issues in accordance with Schedule 12 - Communications Protocol;
 - (viii) matters involving any Railway Company, Railway Agreement, Railway Order, Utility Company, Utility Agreement or Utility Infrastructure;
 - (ix) any environmental matters;
 - (x) any Non-Conformance Report;
 - (xi) any issue involving the O&M Interim Services; and
 - (xii) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Phase One Substantial Completion Date, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co's ability to achieve the Phase One Substantial Completion by the Scheduled Phase One Substantial Completion Date, Substantial Completion by the Scheduled Substantial Completion Date, the Phase One Final Completion by the Scheduled Phase One Final Completion Date or Final Completion by the Scheduled Final Completion Date; or
 - (v) any matter with respect to which the Ministry has a right of consent or in respect of which the Ministry may exercise discretion pursuant to this Project Agreement.

11.3 Term of Works Committee

- (a) Unless otherwise agreed, the Works Committee shall operate only until the Final Completion Date.

11.4 Replacement of Committee Members

- (a) The Ministry and SaskBuilds Corporation shall be entitled to replace any of their representatives on the Works Committee by written notice to Project Co. The Ministry will use commercially reasonable efforts to deliver prior written notice of any such replacements to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of the Ministry.

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative and any of the Ministry's representatives or the SaskBuild representative on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, in the City of Regina or in any other location in the Province of Saskatchewan. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of the Ministry, the Ministry Representative, the SaskBuild representative and the Project Co Representative shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the Ministry notifies Project Co within 5 Business Days of receipt of the minutes that the Ministry disagrees with the contents of the minutes, the Ministry and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by the Ministry and the SaskBuild representative during regular business hours.

12. BYPASS MANAGEMENT COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the Scheduled Substantial Completion Date, establish a committee (the “**Bypass Management Committee**”) to serve until the Termination Date consisting of:
- (i) 3 representatives appointed by the Ministry from time to time;
 - (ii) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative and the other shall be appointed by Project Co; and
 - (iii) such other members as the Ministry and Project Co may agree from time to time.
- (b) Members of the Bypass Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Bypass Management Committee.

1 of the representatives of the Ministry shall be the chairperson of the Bypass Management Committee.

12.2 Function and Role

- (a) The Bypass Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Bypass Management Committee shall interface with the Works Committee as and when required.
- (b) The Bypass Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Works), both prior to and during the Operational Term, including:
- (i) any joint review of the OM&R Work and the Technical Requirements;
 - (ii) any performance issues;
 - (iii) any special matter referred to the Bypass Management Committee by the Ministry or Project Co;
 - (iv) any community and media relations issues in accordance with Schedule 12 - Communications Protocol;
 - (v) matters involving any Railway Company, Railway Agreement, Railway Order, Railway Infrastructure, Utility Company, Utility Agreement or Utility Infrastructure;
 - (vi) any Integrated Management System issues, including quality assurance, environmental and safety issues;
 - (vii) any Non-Conformance Reports; and

- (viii) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Bypass Management Committee shall be final and binding on the Parties. If the Bypass Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.
- (d) The Bypass Management Committee shall not have authority to make decisions with respect to or approve:
 - (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co's ability to perform the OM&R Work or the performance by the relevant parties of any Governmental Activities; or
 - (iv) any matter with respect to which the Ministry has a right of consent or in respect of which the Ministry may have discretion pursuant to this Project Agreement.

12.3 Replacement of Committee Members

- (a) The Ministry shall be entitled to replace any of its representatives on the Bypass Management Committee by written notice to Project Co. The Ministry will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Bypass Management Committee with the prior written consent of the Ministry.

12.4 Procedures and Practices

- (a) The members of the Bypass Management Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Bypass Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Bypass Management Committee such other persons as the members of the Bypass Management Committee may agree;
 - (iii) exclude from any meeting of the Bypass Management Committee such persons as the members of the Bypass Management Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Bypass Management Committee.
- (b) Once established, the Bypass Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Bypass Management Committee or the Parties.

- (c) Any member of the Bypass Management Committee may convene a special meeting of the Bypass Management Committee at any time. Special meetings of the Bypass Management Committee may be convened on not less than 5 Business Days notice to all members of the Bypass Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Bypass Management Committee, the Bypass Management Committee shall meet at the Site, in the City of Regina or in any other location in the Province of Saskatchewan. Meetings of the Bypass Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Bypass Management Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of the Ministry and 1 representative of Project Co shall constitute a quorum at any meeting of the Bypass Management Committee. A quorum of members may exercise all the powers of the Bypass Management Committee. The members shall not transact business at a meeting of the Bypass Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Bypass Management Committee, including those made by telephone or other form of communication, shall be recorded and maintained by the Ministry. The Ministry shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies the Ministry within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, the Ministry and Project Co shall be deemed to have approved such minutes. The Ministry shall maintain a complete set of all minutes of the meetings of the Bypass Management Committee and shall make such minutes available for inspection by Project Co during regular business hours.

13. INTEGRATED MANAGEMENT SYSTEM

- (a) Project Co shall comply with the provisions of Schedule 14 - Integrated Management System.

14. LICENCE

14.1 Licence to Lands

- (a) Subject to this Section 14, the Ministry hereby grants or has caused to be granted, and shall continuously grant or cause to be granted, to Project Co and all Project Co Parties non-exclusive licence rights of use and access to, on and over the Lands and the Bypass as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing its obligations described in the Project Co Permits, Licences and Approvals) to allow Project Co and such Project Co Parties to perform the Project Operations and the O&M Interim Services, including to perform Project Co's obligations pursuant to Sections 9.5 and 9.6:
 - (i) in respect of the Available Lands, from Financial Close until the Termination Date;

- (ii) in respect of the After-Acquired Lands, on or prior to the dates set out in Schedule 17 for acquisition of the After-Acquired Lands until the Termination Date;
 - (iii) in respect of the Conveyed Lands, from Financial Close to Substantial Completion; and
 - (iv) in respect of the Temporary-Use Lands, from Financial Close until the earlier of the Substantial Completion Date and the date Project Co permanently vacates the Temporary-Use Lands.
- (b) Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands, act in a manner consistent with the obligations of Project Co under the Project Agreement.
 - (c) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
 - (d) Without derogating from any of the Ministry's rights hereunder, the Ministry acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and the Ministry shall provide, access to the Lands without material interference by the Ministry or any Province Person for such period of time identified in Section 14.1(a) applicable thereto.
 - (e) None of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Lands, or to any lands other than the Lands, other than easements and similar interests of the Ministry which benefit the Lands, obtained after Commercial Close, to the extent the same are necessary for the Project Operations.
 - (f) The licence provided in this Section 14.1 in respect of Conveyed Lands shall terminate on Substantial Completion, provided, however, that the Ministry shall provide, or cause to be provided, access to the Conveyed Lands sufficient to allow Project Co to perform its obligations pursuant to this Project Agreement.
 - (g) The licence provided in this Section 14.1 in respect of Temporary-Use Lands shall terminate on the earlier of the Substantial Completion Date and the date Project Co permanently vacates the Temporary-Use Lands.
 - (h) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.
 - (i) For greater certainty, the licence provided in this Section 14.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Lands for use in the Project Operations, other than aggregates for incorporation into the Works.

14.2 Non-exclusive Licence/Development of Lands

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that the Ministry and any person authorized by the Ministry may occupy and possess the Lands and the Bypass without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities or the Other Works.

- (b) Without limiting Section 14.2(a), Project Co acknowledges that the Ministry may from time to time use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the Lands other than those portions of the Lands necessary for the performance of the Project Operations. To the extent that such use, development or disposition materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use, development or disposition shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.

14.3 Naming and Signage

- (a) Project Co acknowledges that the Ministry reserves and retains (i) all rights to designate the name for the Bypass and any part of the Bypass; (ii) all rights to signage in relation to the Lands and the Bypass; and (iii) all rights, Trade-Marks, naming or branding regarding the Bypass or any part of the Bypass. It is agreed, however, that, with the prior written consent of the Ministry, which may take into consideration any applicable governmental guidelines, including guidelines set out in Schedule 12 - Communications Protocol, Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) identifying their respective roles in connection with the development and construction of the Project.

14.4 No Interest in Land

- (a) Project Co agrees that it acquires no estate, right, title or ownership interest in the Lands or the Bypass or any other interest in land pursuant to this Project Agreement or otherwise.

14.5 Non-Disturbance Agreement

- (a) If the Ministry mortgages, charges or otherwise encumbers the Lands, the Ministry shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Lands permitting Project Co and the Lenders' Agent to access and use the Lands under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from such mortgagee or any person claiming by or through such mortgagee. This Section 14.5 shall not apply in respect of any portion of such Lands used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Lands.

15. ENCUMBRANCES

15.1 Encumbrances

- (a) Project Co shall perform all obligations under all Encumbrances and Title Encumbrances for or on behalf of the Ministry, other than:
- (i) obligations which Project Co is not legally capable of performing for or on behalf of the Ministry;
 - (ii) obligations under any Encumbrance or Title Encumbrance added after the date of this Project Agreement unless

- (A) such obligations are provided in the Technical Requirements as obligations of Project Co; or
 - (B) the Parties agree that such obligations are obligations of Project Co; and
 - (iii) obligations under any Encumbrance or Title Encumbrance which any Local Authority may formally relieve or waive, with the consent of the Ministry, with respect to any Development Approval.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Encumbrances, Title Encumbrances or any Development Approval.
 - (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part of it, except in accordance with the terms of this Project Agreement.

15.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Lands or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) Project Co shall promptly notify the Ministry of any Encumbrance which is not a Title Encumbrance as soon as it becomes aware thereof.
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party which has not been consented to in writing by the Ministry, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, the Ministry will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (d) In the event that the Lands or any part thereof or any interest therein is or becomes subject to any Encumbrance which is not a Title Encumbrance and which is not due to an act or omission of Project Co or any Project Co Party, prior to performing obligations under any such Encumbrance, Project Co shall notify the Ministry of any such Encumbrance and the Ministry shall:
 - (i) cause the Encumbrance to be removed, vacated or discharged;
 - (ii) perform the required obligations thereunder; or
 - (iii) instruct Project Co to perform the required obligations thereunder.

- (e) If Section 15.2(d) requires Project Co to perform obligations under an Encumbrance which performance imposes costs or delays on performance of the Project Operations, such performance:
 - (i) prior to Substantial Completion shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2, 16.3, 16.4 and 38, Project Co acknowledges and agrees that it has investigated the Lands and the Other Existing Infrastructure and Additional Resources, including the Background Information, prior to executing this Project Agreement and agrees to accept the Lands, the Other Existing Infrastructure, the Additional Resources and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, 16.3 16.4 and 38, Project Co shall not be entitled to make any claim of any nature whatsoever against the Ministry or any Province Person on any grounds relating to the Lands, the Other Existing Infrastructure, the Additional Resources or the Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Lands, the Other Existing Infrastructure, the Additional Resources or the Site Conditions was given to it by any person, whether or not a Province Person, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Lands, the Other Existing Infrastructure, the Additional Resources or the Site Conditions provided by such person to Project Co.
- (b) Subject to Sections 6.4, 16.2, 16.3, 16.4 and 38, Project Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) performed all necessary due diligence and investigation on the Lands and examined the Lands and their surroundings and any Other Existing Infrastructure and Additional Resources;
 - (ii) performed all necessary due diligence and investigation on the Other Existing Infrastructure and satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of such Other Existing Infrastructure;
 - (iii) performed all necessary due diligence and investigation on the Additional Resources and satisfied itself prior to executing this Project Agreement as to the environmental and general condition, quantity and quality of such Additional Resources;
 - (iv) satisfied itself as to the presence of any Contamination on, in or under the Lands or migrating to or from the Lands;
 - (v) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;

- (vi) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands;
 - (vii) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - (viii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

16.2 Contamination

- (a) The Ministry shall be responsible for Contamination on, in or under, or migrating to or from, the Lands, except for any such Contamination:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports or the Geotechnical Reports; or
 - (ii) that is caused by any Bypass User (other than a Province Person), Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination, Project Co shall immediately inform the Ministry Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 15 – Technical Requirements in respect thereof and the Environmental Protection Plan:
- (i) at the Ministry's cost pursuant to Section 16.2(e), in respect of Contamination for which the Ministry is responsible pursuant to Section 16.2(a), and
 - (ii) at its own cost in respect of Contamination for which it is responsible pursuant to Section 16.2(a).
- (c) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 16.2(b) in respect of Contamination for which the Ministry is responsible pursuant to Section 16.2(a) until the Ministry Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (d) In the event that the Ministry wishes Project Co to perform actions in respect of any Contamination which are in addition to any actions required pursuant to Section 16.2(b), then the Ministry shall issue an instruction to Project Co specifying any action(s) the Ministry requires

Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the Ministry's cost pursuant to Section 16.2(e).

- (e) If, pursuant to Sections 16.2(b) or 16.2(d), Project Co is required to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which the Ministry is responsible pursuant to Section 16.2(a) or as a result of any instructions given by the Ministry pursuant to Section 16.2(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
- (i) prior to Substantial Completion shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.
- (f) In the event that the Ministry and Project Co do not agree as to the nature or extent of the Contamination or of the actions to be performed by Project Co pursuant to Section 16.2(b), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and the Ministry, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties, except to the extent that:
- (i) the Parties cannot agree with respect to an acceptable independent and suitably qualified and experienced person; or
 - (ii) either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement,

in which event either Party may refer the disagreement for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

16.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands are or shall be the sole and absolute property of the Ministry.
- (b) The Ministry shall be responsible for items referred to in Section 16.3(a) except for any such items that were described in, or were properly inferable, readily apparent or readily discoverable from, the Environmental Reports.
- (c) Upon the discovery of any item referred to in Section 16.3(a), Project Co shall:
 - (i) immediately inform the Ministry Representative of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Project Operations insofar as performing such Project Operations would endanger the item or prevent or impede its excavation, take all necessary steps to preserve and ensure the preservation of the item in

the same position and condition in which it was found, and comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 15 – Technical Requirements and the Environmental Protection Plan:

- (A) at the Ministry's cost pursuant to Section 16.3(e), in respect of any such discovery for which the Ministry is responsible pursuant to Section 16.3(b); and
 - (B) at its own cost in respect of any such discovery for which it is responsible pursuant to Section 16.3(b).
- (d) In the event that the Ministry wishes Project Co to perform actions in respect of any discovery of any item referred to in Section 16.3(a) which are in addition to any required pursuant to Section 16.3(c), then the Ministry shall issue an instruction to Project Co specifying any action(s) the Ministry requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the Ministry's cost pursuant to Section 16.3(e).
- (e) If, pursuant to Sections 16.3(c) or 16.3(d), Project Co is required to perform any alteration, addition, demolition, extension or variation in the Works as a result of any discovery for which the Ministry is responsible pursuant to Section 16.3(b) or as a result of any instructions given by the Ministry pursuant to Section 16.3(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation (but in the case of Section 16.3(c), only to the extent it directly results in the interruption of the Works during a continuous period of 14 days or more with respect to each such discovery) shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event.
- (f) In the event that the Ministry and Project Co do not agree as to the nature or extent of the actions required to be performed by Project Co pursuant to Section 16.3(c)(ii), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and the Ministry, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that:
- (i) the Parties cannot agree with respect to an acceptable independent and suitably qualified and experienced person; or
 - (ii) either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement,

in which event either Party may refer the disagreement for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

16.4 Species at Risk

- (a) The Ministry shall be responsible for any Species at Risk which may be found on, in or at the Lands, except for any Species at Risk the occurrence of which, in the location in which it is found, was described in the Environmental Reports.

- (b) In respect of Species at Risk for which Project Co is responsible pursuant to Section 16.4(a), Project Co shall, at its own cost, comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 15 – Technical Requirements and the Environmental Protection Plan. Upon the discovery of any Species at Risk for which the Ministry is responsible pursuant to Section 16.4(a), Project Co shall:
- (i) immediately inform the Ministry Representative of such discovery; and
 - (ii) comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 15 – Technical Requirements in respect thereof and the Environmental Protection Plan, including taking all necessary steps to comply with any management plan or recovery plan instituted pursuant to the *Wildlife Act*, 1998 (Saskatchewan) for the Species at Risk in question, at the Ministry's cost pursuant to Section 16.4(d).
- (c) In the event that the Ministry wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.4(b), then the Ministry shall issue an instruction to Project Co specifying any action(s) the Ministry requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the Ministry's cost pursuant to Section 16.4(d).
- (d) If Sections 16.4(b) or 16.4(b)(ii) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of the discovery of any Species at Risk for which the Ministry is responsible pursuant to Section 16.4(a) or as a result of any instructions given by the Ministry pursuant to Section 16.4(b)(ii) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
- (i) prior to Substantial Completion shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.

17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 Governmental, Railway and Utility Company Fees

- (a) Except as otherwise expressly provided in this Agreement, Project Co shall be responsible for all Financial Obligations under or in respect of all Project Co Permits, Licences and Approvals and the Ministry shall be responsible for all Financial Obligations under or in respect of all the Ministry Permits, Licences and Approvals, including, as applicable in either case, to any Local Authority, any Utility Company, any Railway Company, any Governmental Authority or any third party in respect of the Project Operations, including:
- (i) any development charges relating to the Works, the Bypass or the Site;
 - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;

- (iii) any security deposits required under any Permits, Licences and Approvals; and
 - (iv) any other amounts payable under any Permits, Licences and Approvals.
- (b) The Parties agree that any refund, partial rebate or credit granted by any Local Authority, any applicable Utility Company, any applicable Railway Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of the Ministry to the extent such Financial Obligations were paid by the Ministry and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

18. CHANGE IN STANDARDS

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the performance of the Works or the OM&R Work, and that standard has changed between the Financial Submission Date and the date that such compliance is required, Project Co shall give notice to the Ministry of such change. If, after such notice, the Ministry requires compliance with the changed standard (rather than the standard applicable as of the Financial Submission Date), then, to the extent such change affects the performance of the Works or the OM&R Work and would not have otherwise been required by Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation. If the Ministry does not require compliance with the changed standard, Project Co shall continue to comply with the standard applicable as of the Financial Submission Date and no Variation shall be available. This Section 18 shall not apply where a change in a technical standard is also a Change in Law.

19. COORDINATION AND NO DISRUPTION

- (a) Except as expressly set out in this Project Agreement, Project Co shall perform the Project Operations so as to coordinate with:
- (i) the operations of the Ministry, any Province Person, any Governmental Authority, Other Contractor, Railway Company or Utility Company engaged in activities on or about the Lands; and
 - (ii) the Governmental Activities.
- (b) Project Co shall use commercially reasonable efforts to minimize:
- (i) any interference with the operations of the Ministry, any Province Person, any Governmental Authority, any Other Contractor, Railway Company or Utility Company, including the performance of the Governmental Activities and the Other Works;
 - (ii) any interference with the Governmental Activities or the operation, maintenance and rehabilitation of any Saskatchewan road or roadway proximate to the Lands; and
 - (iii) unless otherwise expressly permitted by the Technical Requirements, any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Bypass.

20. DESIGN AND CONSTRUCTION OBLIGATIONS**20.1 Overall Responsibility**

- (a) Project Co shall perform and complete the Works:
 - (i) so as to satisfy the Technical Requirements;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with the Design Data;
 - (iv) in accordance with the Works Schedule; and
 - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 20.1(a), but subject to the provisions of the OM&R Requirements, Schedule 18 - Payment Mechanism and Schedule 21 - Handback Procedure, if, at any time during the Project Term, any of the Works, the Bypass or any parts thereof do not fully satisfy the Technical Requirements and/or any other term or condition of this Project Agreement (without regard to the Project Co Proposal Extracts), Project Co shall, at its own cost and expense, rectify the Works, the Bypass and any part thereof so that:
 - (i) the Works, the Bypass and all parts thereof shall, at all times, comply with and satisfy in full the Technical Requirements and the other terms and conditions of this Project Agreement (without regard to the Project Co Proposal Extracts); and
 - (ii) the Works, the Bypass and all parts thereof will, at all times, be able to meet all safety and performance standards and other requirements set out in the Technical Requirements.

20.2 Complete and Operational Bypass

- (a) Project Co shall design, engineer, construct and commission the Bypass so as to provide the Ministry a complete and operational Bypass in accordance with the Technical Requirements and the Project Co Proposal Extracts, that will permit Project Co to perform the OM&R Work, all in accordance with and subject to the terms of this Project Agreement.

20.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Bypass and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 9 - Review Procedure and this Section 20.3.
- (b) The further development of the design of the Bypass and the process by which such design is progressed must fully comply with the requirements of this Project Agreement.
- (c) The Parties agree that Appendix A to Schedule 9 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include (to a scale required by the Ministry Representative):

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- (i) design development drawings, reports, schedules and specifications progressed from Commercial Close, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawing documentation, submitted at 50% completion (the “**Pre-final Design Development Submittals**”) and at 90% completion (the “**Final Design Development Submittals**”) of the development of the working drawings (collectively, the “**Design Development Submittals**”) or such other levels of completion proposed by Project Co or the Ministry and acceptable to the Ministry Representative, in its discretion;
 - (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement, submitted at 100% completion of the construction drawings (the “**Construction Document Submittals**”); and
 - (iii) all other documentation required pursuant to Schedule 9 - Review Procedure.
- (d) If required by the Ministry, the Construction Document Submittals shall each be accompanied by a Technical Appraisal Form.
 - (e) Project Co shall submit to the Ministry Representative for review in accordance with Schedule 9 - Review Procedure all Design Data and other items listed in Sections 20.3(b) and 20.3(d).
 - (f) The Design Data and other items listed in Section 20.3(b) must contain, at a minimum, the following additional information:
 - (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the Ministry Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 9 - Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
 - (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Bypass prior to being entitled to proceed in accordance with Schedule 9 - Review Procedure and it is subsequently determined in accordance with Schedule 9 - Review Procedure or Schedule 22 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

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- (h) Neither the Ministry nor any Province Person will have any liability:
- (i) if a document submitted by Project Co and reviewed by the Ministry, the Ministry Representative or the Ministry Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (i) Project Co and Ministry will cooperate with each other in the design review process. Notwithstanding such cooperation by the Ministry, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (j) Project Co shall allow the Ministry Representative and the Ministry Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Ministry Representative and/or the Ministry Design Team, as applicable, as soon as practicable following receipt of a written request from the Ministry Representative.

20.4 Start-Up Meeting

- (a) Within 10 Business Days after Commercial Close, Project Co and the Design Team shall attend a start up meeting (the “**Start-Up Meeting**”) with the Ministry to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
- (i) Project Co’s plan to develop a successful long-term partnership with the Ministry for the purpose of supporting the Ministry in achieving its vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co’s process to ensure optimum design quality;
 - (iv) Project Co’s approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully integrated team;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Ministry Representative to allow sufficient time for review of each Works Submittal by the Ministry Representative, and taking into account both the resources available to the Ministry Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
 - (vi) Project Co’s plan to successfully integrate feedback from consultations with the Ministry Design Team;

- (vii) Project Co's approach to timing, construction, and adjustment; and
- (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the document security protocol described in Section 51.5(f).

20.5 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings (the "**Design Review Meetings**") with the Ministry and the Ministry Design Team upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Ministry Representative;
 - (ii) the Ministry may, in its discretion, require Project Co to consult with and permit Stakeholders to participate in such Design Review Meetings;
 - (iii) all Design Review Meetings shall be held in the City of Regina unless the Ministry agrees otherwise in writing;
 - (iv) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the Works Schedule;
 - (v) Project Co shall circulate to the Ministry, the Ministry Design Team and applicable Stakeholders an agenda for each of the Design Review Meetings no later than 5 Business Days prior to the relevant Design Review Meeting;
 - (vi) in advance of a Design Review Meeting, Project Co may submit to the Ministry Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform the Ministry on the development of Bypass design and provide an opportunity for dialogue on compliance with the requirements of the Project Agreement. For greater certainty, interim submissions shall be informal and shall not be reviewed in accordance with Schedule 9 - Review Procedure;
 - (vii) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (viii) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within 5 Business Days after each Design Review Meeting, Project Co shall provide to the Ministry and the Ministry Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and
- (b) The Ministry and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 9 - Review Procedure applies, and that the Ministry shall not be bound by the input provided in connection with the Design Review Meetings, including Stakeholder input.

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- (c) The Parties shall, together with the Ministry Design Team, hold Design Review Meetings prior to the submission of:
- (i) each of the Design Development Submittals; and
 - (ii) each of the Construction Document Submittals.
- (d) The purpose of the Design Review Meetings is to facilitate the incorporation of the Ministry input, involvement and feedback and Stakeholder comments into the Design Data prior to submission of such Design Data in accordance with Schedule 9 - Review Procedure.
- (e) Without limiting Section 20.5(b), Project Co shall, if required by the Ministry:
- (i) incorporate Stakeholder input into its Design Data; and
 - (ii) at Project Co's sole cost and expense, use all commercially reasonable efforts to obtain written endorsement from affected Local Authorities of the design of the Bypass.
- (f) If, in respect of any or all Infrastructure Components, the additional cost to Project Co of incorporating Stakeholder input into such Infrastructure Component pursuant to Section 20.5(e)(i) exceeds an aggregate of ("Excess Stakeholder Input Costs"), the requirement to so incorporate Stakeholder input shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation, provided that any compensation pursuant to such Variation shall be limited to the Excess Stakeholder Input Costs.
- (g) If, notwithstanding Project Co's compliance with its obligations under Section 20.5(e)(ii), a Local Authority fails to provide its written endorsement within 30 days of Project Co's application for such written endorsement, Project Co shall provide written notice to the Ministry Representative within a further 5 Business Days. The Ministry Representative shall, promptly upon receipt of the aforesaid notice from Project Co, notify Project Co that it will either:
- (i) waive the requirement for endorsement from such Local Authority; or
 - (ii) confirm the requirement for endorsement from such Local Authority and require Project Co to vary the design of the Bypass in such manner as is necessary to obtain such endorsement.

In the event that the Ministry Representative confirms the requirement for endorsement from such Local Authority, and requires Project Co to vary the design of the Bypass in connection therewith, such requirement shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation. For the avoidance of doubt, except to the extent expressly provided in a Variation Confirmation or a Variation Directive, nothing in this Section 20.5(f) shall relieve Project Co from complying with its obligations under this Project Agreement.

20.6 Testing

- (a) To the extent and in the manner provided by the IMS Documentation and other terms of this Project Agreement, all testing shall be carried out by a duly accredited and certified testing facility and organization. The Ministry Representative shall be given timely advance notice (being not less than 2 Business Days) of the date of such tests, except for categories of tests (if

- any) in respect of which the Ministry Representative gives written notice to Project Co that it does not require such notice. The Ministry Representative and any other MHI Party at the Ministry's option shall be entitled to attend at any test. Any materials or Plant which fail such tests shall be rejected.
- (b) Project Co shall develop a test recording system which shall permit ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology and test readings to the Ministry Representative on request.
- (c) With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and bituminous material quality), Project Co shall provide to the Ministry Representative at regular intervals (not to exceed weekly unless otherwise agreed) test summary sheets and statistical analyses indicating strength and quality trends.

20.7 Checking

- (a) Project Co shall, at its own cost and expense, engage consultants to conduct activities as set forth in Section 200.7.22 of Schedule 15-2 - Technical Requirements – Design and Construction (the “**Checking Team**”).
- (b) The following expertise shall be included in the expertise of the Checking Team:
- (i) recognized expertise in:
- (A) the disciplines of geotechnical and structural engineering;
 - (B) the analysis and design of all aspects of complex structures;
 - (C) the use of state-of-the-art geotechnical, structural, and soil-structure interaction modeling and software used for design and analysis of foundations; and
 - (D) the review of designs to ensure compliance with Environmental Laws and other environmental requirements; and
- (ii) individuals who are registered or qualified to be registered as Professional Engineers in the Province of Saskatchewan.
- (c) Members of the Checking Team and their employers (or other legal entities in respect of which such members have a comparable relationship, including, without limitation, partnerships and consultancy arrangements):
- (i) shall not be engaged in carrying out any design work for Project Co; and
 - (ii) shall be at arm's length from, and independent of, the Construction Contractor, the O&M Provider and the CPPRW Contractor and any other person providing or carrying out any design work or design checking in respect of the Project.

20.8 Performance of Design Obligations

- (a) In the design and engineering of the Bypass, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional engineering personnel and other licensed or registered professionals, as applicable, having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by Professional Engineers registered to practice in the Province of Saskatchewan. Such Professional Engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Saskatchewan, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

20.9 General Construction Obligations

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Bypass, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 14 - Integrated Management System;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Works from all of the elements, casualty and damage;
 - (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Technical Requirements;
 - (B) are new (unless otherwise expressly permitted by the Technical Requirements), of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Technical Requirements, have been substituted with the Ministry's prior written consent in accordance with Section 20.10.
- (c) Without limiting Project Co's obligations pursuant to Sections 9.5 or 9.6 or Project Co's indemnity pursuant to Section 55.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Site to prevent access onto the Site of any

persons not entitled to be there, as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.

20.10 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of the Ministry, in its discretion.

20.11 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by the Ministry prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by the Ministry pursuant to Schedule 9 - Review Procedure. The first document to be submitted by Project Co for review by the Ministry pursuant to Schedule 9 - Review Procedure shall be the draft document control and security protocol described in Section 51.5(f).

20.12 Works Period Operations and Maintenance

- (a) On or prior to Commercial Close, the Parties shall enter into the O&M Interim Services Agreement substantially in the form of Schedule 28 – O&M Interim Services Agreement.

21. ACCESS AND MONITORING

21.1 Access for Province Persons and the Ministry Archaeologist

- (a) Subject to Section 21.1(b), but without limiting any of the Ministry's rights in respect of the Site or the Bypass, Project Co:
- (i) acknowledges and agrees that throughout the Project Term, the Ministry, the Province Persons and their respective representatives, including Her Majesty the Queen in Right of Canada and the Auditor General of Canada, shall have unrestricted access to the Site and the Bypass and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions; and
 - (ii) shall, and shall ensure that the Project Co Parties shall, throughout the Project Term, give the archaeologist appointed by the Ministry in respect of the Project, and each of its agents, representatives, contractors and employees (collectively, the "**Ministry Archaeologist**") access to those parts of the Site and the Bypass as is necessary for the purpose of allowing the Ministry Archaeologist to monitor and inspect the excavation of

the Site, provided always that such right of access shall be on reasonable prior notice to Project Co.

- (b) In exercising their access rights under Section 21.1(a), the Ministry, the Province Persons, their respective representatives and the Ministry Archaeologist shall:
 - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for the use of the Ministry and/or Province Persons); and
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time.

21.2 Increased Monitoring

- (a) If, at any time during the Project Term, the Ministry is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Technical Requirements and the Project Co Proposal Extracts), the Ministry may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as the Ministry considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to the Ministry's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Project Agreement. Project Co will compensate the Ministry for any reasonable costs incurred as a result of such increased monitoring.

21.3 Right to Uncover

- (a) Project Co shall ensure that the Ministry is afforded advance notice of, and that the Ministry is afforded a full opportunity to witness, all inspection and test activity in accordance with the Construction Management Plan and the IMS Documentation. If Project Co does not provide such notice and opportunity, Project Co shall at the request of the Ministry uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit the Ministry to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.
- (b) The Ministry shall have the right, at any time during the Project Term, to request Project Co to uncover and inspect (or allow the Ministry to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where the Ministry reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When the Ministry makes such a request, the Ministry shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Design Data) relevant to such

part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to the Ministry and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.

- (d) If an inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by the Ministry of its rights pursuant to this Section 21.3:
- (i) prior to Substantial Completion shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.

21.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by the Ministry or the Ministry Representative of the rights under this Section 21 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 21.

21.5 Access by Others

- (a) Subject to Section 9.7, Section 14.1(a), Section 21.5(b) and Schedule 29 – Additional Works and Third Party Works (in each case, to the extent applicable), Project Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law:
- (i) any contractors, consultants or other persons authorized by the Ministry Representative or the Ministry, including the Other Contractors, have access to those parts of the Lands and the Bypass as is necessary for the purpose of carrying out the Other Works;
 - (ii) the Independent Certifier has access to the Lands and the Bypass to the extent required to perform its obligations pursuant to Schedule 6 - Independent Certifier Agreement;
 - (iii) inspectors and other persons authorized to act on behalf of the Ministry have access to the Site for inspection and acceptance purposes;
 - (iv) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents, have access to the Lands and the Bypass at all reasonable times to perform Other Works and where applicable, in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Agreements, Railway Orders or encroachment permits, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
 - (v) all Governmental Authorities and Emergency Service Providers have access to the Lands and the Bypass in order to carry out any work (including surveys and inspections) in

accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations; and

- (vi) any Province Person, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies and Railway Companies are permitted to enter upon the Lands and the Bypass for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands and the Bypass (including any other highway) owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations.
- (b) In exercising their access rights under Section 21.5(a), each person referred to therein (except for Other Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Schedule 29 shall (except in the case of access rights described in Section 21.5(a) for the purpose of responding to an Emergency (for the purposes of this clause (b), references in the definition of “Emergency” to the Ministry or the Ministry Representative shall be deemed to be references to the applicable Governmental Authority or Emergency Service Provider) and except to the extent inconsistent with the applicable requirements of such Governmental Authority or Emergency Service Provider):
 - (i) provide reasonable prior notice appropriate to the circumstances;
 - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

21.6 Public Use

- (a) It is the Ministry and not Project Co that grants to the general public the right to use the Bypass. Without limiting Project Co’s obligations pursuant to the O&M Interim Services Agreement to provide the O&M Interim Services in respect of the Interim Maintenance Sections so that the Ministry may make the Interim Maintenance Sections available for use to the general public, Project Co shall use commercially reasonable efforts to keep open for public use the Bypass at all times during the Operational Term, except for lane closures or diversions of traffic flow:
 - (i) by Project Co in accordance with the provisions of the Traffic Management Plan; or
 - (ii) of a type described in clauses (a) to (e) of the definition of “Excepted Lane Closure” in Schedule 15-1 - Technical Requirements – General Information;

and, except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against the Ministry, any Province Person, Emergency Service Providers or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section or as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority affecting all or any part of the Site or the Bypass at any time.

- (b) Subject to closures or diversions of traffic flow with respect to the Bypass permitted by Section 21.6(a)(i) and Section 21.6(a)(ii), Project Co shall cause all Works and OM&R Work to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure (other than the Bypass), whether under the control or in the possession of the Ministry or any other person.
- (c) The Ministry may, in its discretion, delay access by the general public to any completed portion of Phase One until one (1) week following the Phase One Substantial Completion Date and to any portion of the remainder of the Bypass until one (1) week following the Substantial Completion Date.

22. WORKS SCHEDULE AND WORKS REPORT

22.1 Completion of Works

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
 - (i) Phase One Substantial Completion by the Scheduled Phase One Substantial Completion Date;
 - (ii) Substantial Completion by the Scheduled Substantial Completion Date;
 - (iii) Phase One Final Completion by the Scheduled Phase One Final Completion Date; and
 - (iv) Final Completion by the Scheduled Final Completion Date.

22.2 The Works Schedule

- (a) Project Co shall prepare and submit to the Ministry and the Independent Certifier:
 - (i) within 30 days after Financial Close, a detailed 6-Month Works Schedule;
 - (ii) within 180 days after Financial Close, a detailed draft of the Works Schedule; and
 - (iii) every 180 days thereafter until Final Completion, an updated detailed draft of the Works Schedule,

each using Primavera 6.0 or other software compatible with Primavera 6.0, in electronic and hard copy format that support the completion of the Works in accordance with Section 22.1.

- (b) The Ministry shall provide Project Co with comments on the 6-Month Works Schedule and the draft of the Works Schedule in accordance with Schedule 9 - Review Procedure, provided that the period for review of the draft of the 6-Month Works Schedule and the Works Schedule shall be

- 20 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 9 - Review Procedure. Project Co shall revise the 6-Month Works Schedule and the draft of the Works Schedule to the extent required by Schedule 9 - Review Procedure within 15 days of receipt of any comments from the Ministry.
- (c) When agreed by the Parties, the draft of the Works Schedule shall become the Works Schedule.
- (d) The 6-Month Works Schedule and the Works Schedule shall be prepared in accordance with Good Industry Practice for a project of similar scale, scope, type and complexity and shall be in sufficient detail so as to enable the Ministry Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works.
- (e) Without limiting the generality of Section 22.2(d), the 6-Month Works Schedule shall include, at a minimum, in respect of the 6-month period beginning at Financial Close:
- (i) all elements to be included in the Works Schedule pursuant to Part 1 of Schedule 3 to the Request for Proposals;
 - (ii) major milestone events;
 - (iii) the dates that key decisions must be made by the Ministry, or key meetings where the Ministry is to be present, to support the progress of the Works;
 - (iv) the proposed dates for all plans, all Works Submittals and all OM&R Submittals required to be submitted under this Project Agreement and any Schedule by Project Co pursuant to the Review Procedure;
 - (v) all activities related to the environmental process and Environmental Approvals, including review periods by Governmental Authorities and third parties pursuant to Project Co Permits, Licences and Approvals showing in sufficient detail how these dates affect the critical path of the Schedule, as well as how these dates affect the commencement date of vegetation clearing and grubbing;
 - (vi) all design related activities;
 - (vii) all field and construction activities, including construction staging, subcontract work and cash allowance work, both on and off the Site;
 - (viii) all activities leading up to vegetation clearing and grubbing;
 - (ix) projected Construction Contract cash flows; and
 - (x) a narrative that describes, in sufficient detail, the rationale behind the items identified in this Section 22.2(e).
- (f) Without limiting the generality of Section 22.2(d), the Works Schedule shall include, at a minimum, in respect of the period from 6 months following Financial Close until the Substantial Completion Date:

- (i) subject to Section 22.2(f)(ii), all elements to be included in the 6-Month Works Schedule pursuant to Section 22.2(e);
- (ii) the proposed date for each Works Submittal, except for the proposed dates for plans under Subsection (iv) of Section 22.2(e);
- (iii) the process and schedule for Road Safety Audits;
- (iv) all Project Co Commissioning activities;
- (v) the manpower requirements for each activity, including subcontract work;
- (vi) a manpower histogram, with descriptions of overall manpower as well as by trade and manpower sourced locally (including both direct engagement and subcontract work); and
- (vii) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date.

22.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 39, if, at any time:
 - (i) the actual progress of the Works has significantly fallen behind the Works Schedule; or
 - (ii) the Ministry is of the opinion that:
 - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
 - (B) Project Co will not achieve Phase One Substantial Completion by the Phase One Substantial Completion Date or Substantial Completion by the Longstop Date,
- Project Co shall be required:
- (iii) within 10 Business Days of receipt of notice from the Ministry, to produce and deliver to each of the Ministry Representative and the Independent Certifier:
 - (A) a report identifying the reasons for the delay; and
 - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
 - (I) achieve Phase One Substantial Completion by the Scheduled Phase One Substantial Completion Date; or
 - (II) achieve Substantial Completion by the Scheduled Substantial Completion Date; or

- (III) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 22.3(a)(iii)(B) and approved by the Ministry Representative.
- (b) Project Co shall notify the Ministry Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.
- (c) Provided that Project Co has complied with this Section 22.3 and is not in default under Section 44.1(a)(iii), for greater certainty, the failure to achieve Phase One Substantial Completion by the Scheduled Phase One Substantial Completion Date or Substantial Completion by the Scheduled Substantial Completion Date shall not be a Project Co Event of Default for the purposes of Section 44.1(a)(v).

22.4 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of the Ministry, in its discretion, Project Co shall not be entitled to:
 - (i) the Phase One Substantial Completion Certificate prior to, and the Phase One Substantial Completion Date and a Phase One Milestone Payment Date shall not be earlier than, the Scheduled Phase One Substantial Completion Date; or
 - (ii) the Substantial Completion Certificate prior to, and the Substantial Completion Date and Substantial Completion Payment Commencement Date shall not be earlier than, the Scheduled Substantial Completion Date.
- (b) If Project Co advises the Ministry that it expects to be able to achieve Phase One Substantial Completion or Substantial Completion prior to the Scheduled Phase One Substantial Completion Date or the Scheduled Substantial Completion Date, as applicable, the Ministry Representative shall be entitled to require Project Co to produce and submit to the Ministry Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Phase One Substantial Completion or Substantial Completion would be so as to enable the Ministry to consider at its discretion:
 - (i) whether to agree to an earlier Phase One Substantial Completion Date or Scheduled Substantial Completion Date; and
 - (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Phase One Substantial Completion Date or Scheduled Substantial Completion Date.

22.5 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Ministry Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:

- (i) an executive summary describing the general status of the Works and progress made over the relevant month;
- (ii) an updated Works Schedule, in both summary and detailed formats;
- (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes; and
- (iv) an update on those matters set out in Schedule 10 - Works Report Requirements,

all in form and substance satisfactory to the Ministry, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.

- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, a project management software system to store the Works Report and the Works Schedule. Project Co shall supply to the Ministry five (5) licenses that shall enable the Ministry and Province Persons to access and use such project management software system.

23. UTILITIES AND RAILWAYS

23.1 Project Co's Obligations

- (a) Project Co shall not construct or install or permit the construction or installation of any Utility Infrastructure or Railway Infrastructure on, in, under or over the Bypass, the Site and the Lands or any part thereof without the prior consent of the Ministry, in its discretion; provided that Project Co shall not be in default under this Section 23.1 as a result of the exercise by a Utility Company or Railway Company of its rights under a Utility Agreement or Railway Agreement, as applicable, or as a result of any Utility Works or Railway Works carried out by Project Co pursuant to a Utility Agreement or Railway Agreement, as applicable, or in compliance with Section 23.2 or Section 23.3, as applicable and any other relevant provisions of this Agreement.
- (b) Except for Utility Works carried out in compliance with Section 23.2 and any other relevant provisions of this Agreement, all Utility Infrastructure now or hereafter located on, in, under or over the Bypass, the Site and the Lands (including Utilities within any excavation) is to remain in service and be protected and preserved by Project Co during and after the performance of the Works and any other works carried out in the course of the Project Operations.
- (c) Project Co shall be responsible for confirming the actual locations of all Utility Infrastructure now or hereafter located on, in, under or over the Bypass, the Site and the Lands and ensuring that all Project Co Parties are made aware of such locations as necessary to ensure compliance at all times with the provisions of this section 23.1.
- (d) Project Co shall contract directly with the relevant suppliers for all electricity, gas, water, sewer, telephone and other communications services and other utilities and services supplied to the Bypass, the Site and the Lands and used or consumed in the conduct of the Project Operations and shall pay for all such utilities and services. If the Ministry is invoiced for any such utilities or services, the Ministry may pay such invoices and Project Co, upon demand, shall forthwith reimburse the Ministry for the amount so paid. Any Dispute between the Ministry and Project

Co regarding the application of this Section 23.1(d) (including in respect of the amount of any such invoice) may be referred for resolution pursuant to the Dispute Resolution Procedure.

23.2 Utility Works

- (a) Subject to the rights of Utility Companies under the Utility Agreements and, except as otherwise expressly provided in this Agreement, all Utility Works shall be carried out by or under the supervision of and at the risk and expense of Project Co and, without limiting the generality of the foregoing, Project Co shall be responsible for:
- (i) obtaining from the relevant Utility Company, Governmental Authority, private owner or other Stakeholder all rights of entry or access to the relevant Utilities that are necessary or expedient in connection with the Utility Works;
 - (ii) identifying all requirements in respect of the Utility Works, including determining the most effective strategies for undertaking the Utility Works;
 - (iii) liaising, arranging, co-ordinating and entering into all necessary arrangements with relevant Utility Companies, municipalities, private owners and other Stakeholders in connection with the Utility Works, including obtaining any necessary consents or approvals in connection therewith, providing access for inspections and providing information and plans during and following completion of the Utility Works;
 - (iv) ensuring that all Permits, Licences and Approvals in connection with the Utility Works are obtained;
 - (v) observing and complying with any instructions or directions relating to the Utility Works that may be issued by a Governmental Authority; and
 - (vi) securing or causing to be secured the entry into or execution of all relevant construction and maintenance agreements, service contracts, and other agreements in connection with the Utility Works.
- (b) Without prejudice to Section 23.4(f), if Project Co, having used all reasonable efforts to do so, is unable to obtain from the relevant Utility Company, Governmental Authority, private owner or other Stakeholder the rights of entry or access to any Utilities that are necessary or expedient to carry out any Utility Works required for the conduct of the Project Operations within a reasonable time and on reasonable terms, then Project Co may request the assistance of the Ministry (at the expense of Project Co) in obtaining such rights of entry or access and the Ministry, to the extent it has the legal ability to do so under Applicable Law, shall use reasonable efforts to provide such assistance. Where Project Co is given assistance by the Ministry in accordance with this Section 23.2(b), and regardless of whether or not Project Co ultimately obtains the relevant rights of entry or access as a result of the provision of such assistance, Project Co shall indemnify and hold the Ministry harmless in respect of any Direct Losses suffered or incurred by the Ministry as a result of or in connection with the provision of such assistance.

23.3 Railway Works

- (a) Subject to the rights of Railway Companies under the Railway Orders or Railway Agreements, and except as otherwise expressly provided in this Agreement, all Railway Works shall be carried

out by or under the supervision of and at the risk and expense of Project Co and, without limiting the generality of the foregoing, Project Co shall be responsible for:

- (i) obtaining from the relevant Railway Company, Governmental Authority, private owner or other Stakeholder all rights of entry or access to the relevant Railway that are necessary or expedient in connection with the Railway Works;
 - (ii) identifying all requirements in respect of the Railway Works, including determining the most effective strategies for undertaking the Railway Works;
 - (iii) liaising, arranging, co-ordinating and entering into all necessary arrangements with relevant Railway Companies, municipalities, private owners and other Stakeholders in connection with the Railway Works, including obtaining any necessary consents or approvals in connection therewith, providing access for inspections and providing information and plans during and following completion of the Railway Works;
 - (iv) ensuring that all Permits, Licences and Approvals in connection with the Railway Works are obtained;
 - (v) observing and complying with any instructions or directions relating to the Railway Works that may be issued by a Governmental Authority; and
 - (vi) securing or causing to be secured the entry into or execution of all relevant construction and maintenance agreements, service contracts, and other agreements in connection with the Railway Works.
- (b) Project Co shall be responsible for all fees, costs and expenses arising from or in connection with any of the foregoing. If any such fees, costs and expenses are charged directly to the Ministry, the Ministry may pay such fees, costs and expenses and Project Co, upon demand, shall forthwith reimburse the Ministry for the amount so paid. Any Dispute between the Ministry and Project Co regarding the application of this Section 23.3(b) (including in respect of the amount of any such fees, costs and expenses) may be referred for resolution pursuant to the Dispute Resolution Procedure.

23.4 Utility and Railway Agreements

- (a) Except as otherwise expressly provided in this Agreement, Project Co shall, at its own cost and expense, be responsible:
- (i) for negotiating directly with the Utility Companies the Utility Agreements to be entered into between the Utility Companies and the Ministry relating to and governing the Utility Works;
 - (ii) for negotiating directly with the Railway Companies the Railway Agreements to be entered into between the Railway Companies and the Ministry relating to and governing the Railway Works;
- (b) Execution by the Ministry of any such Utility Agreement or Railway Agreement shall be subject to and conditional upon satisfaction of the following terms and conditions:

- (i) the Utility Agreement or Railway Agreement, as applicable, shall be based on, and the substance of such agreement shall not materially deviate from the Framework Agreement or the terms of any memorandum of understanding (“MOU”) between the Ministry and the applicable Utility Company or Railway Company;
 - (ii) the Utility Agreement or Railway Agreement, as applicable, shall permit the Ministry to delegate or subcontract its responsibilities and obligations under the Utility Agreement or Railway Agreement, as applicable, to Project Co and to authorize Project Co to exercise the Ministry’s rights under the Utility Agreement or Railway Agreement, as applicable; and
 - (iii) the Utility Agreement or Railway Agreement, as applicable, shall exclude Betterment from the scope of the Utility Works or Railway Works, as applicable.
- (c) Each Utility Agreement and Railway Agreement shall be submitted and shall be subject to the Review Procedure set out in Schedule 9 – Review Procedure.
- (d) In the exercise of its rights and performance of its obligations under this Agreement, Project Co agrees to comply with, observe and abide by and to cause each Project Co Party and their respective agents, contractors and subcontractors of any tier and employees of any of them to comply with, observe and abide by the terms of all Utility Agreements and Railway Agreements (whether existing at Commercial Close or entered into or amended thereafter in accordance with Section 23.6). Project Co shall not do or omit to do or permit to be done or omitted anything that would result in the Ministry being in default of any terms of the Utility Agreements and Railway Agreements.
- (e) Subject to Section 23.5 of this Agreement, Project Co shall be responsible for all fees, costs and expenses of the Ministry under and pursuant to the Utility Agreements and Railway Agreements. If the Ministry is invoiced for any such fees, costs or expenses, the Ministry may pay such invoices and Project Co, upon demand, shall forthwith reimburse the Ministry for the amount so paid. Any Dispute between the Ministry and Project Co regarding the application of this Section 23.4(e) (including in respect of the amount of any such invoice) may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (f) Project Co is responsible for satisfying itself as to the extent to which it is entitled to take the benefit of or exercise rights under any Utility Agreement or Railway Agreement and, without limiting any other disclaimer or release of liability provided herein, the Ministry makes no representation or warranty whatsoever in that regard. In the event of a dispute between Project Co and a Utility Company or Railway Company as to whether Project Co is entitled to the benefit of or to exercise rights under any Utility Agreement or Railway Agreement, as applicable, which dispute, despite the reasonable and diligent efforts of Project Co, has not been resolved within a reasonable period of time, the Ministry, at the request and expense of Project Co, shall use reasonable efforts within and subject to the scope of its legal rights under the terms of the relevant Utility Agreement or Railway Agreement to assist Project Co in taking the benefit of or exercising the relevant rights under such Utility Agreement or Railway Agreement, as applicable. Where Project Co is given assistance by the Ministry in accordance with this Section 23.4(f) and regardless of whether or not Project Co is ultimately able to take the benefit of or exercise the relevant rights under the relevant Utility Agreement or Railway Agreement as a result of the provision of such assistance, Project Co shall indemnify and hold the Ministry harmless in respect of any Direct Losses as a result of or in connection with the provision of such assistance.

23.5 Cash Allowance Items

- (a) Project Co shall open the Cash Allowance Account, deposit the Initial Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close and shall manage the Cash Allowance Account in accordance with this Section 23.5.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
- (i) Project Co shall deposit the Initial Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close;
 - (ii) Project Co shall hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a commercially reasonable rate of interest, having regard to the amount on deposit and the expected time of withdrawals (provided that any rate of interest obtained from Qualified Investments (as defined in the Lending Agreements) shall be deemed to be a commercially reasonable rate);
 - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
 - (iv) monies in the Cash Allowance Account shall be used by Project Co in respect of Eligible Utilities Costs relating to Cash Allowance Items only, and for no other purpose;
 - (v) Project Co shall provide a reconciliation of the Cash Allowance Account to the Ministry on a monthly basis;
 - (vi) Subject to Project Co's obligation to fund the Initial Cash Allowance Amount pursuant to Section 23.5(b)(i), in the event that the payment requirements for Cash Allowance Items, including applicable PST and GST, for invoices approved by the Ministry, exceed the Initial Cash Allowance Amount, for clarity, determined on an aggregate basis across all Cash Allowance Items prior to approving any such invoices, Project Co and the Ministry shall make deposits into the Cash Allowance Account (“**Additional Cash Allowance Amounts**”) in the following proportions:
 - (vii) if, at the earlier of Final Completion and the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance shall be paid by Project Co to the Ministry or as the Ministry may direct; and

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- (viii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis, as required, and make any appropriate modifications to ensure its efficient operation.
 - (c) Project Co shall provide monthly reports to the Ministry Representative that include the following information itemized for each Utility Company by each Infrastructure Component:
 - (i) itemized and aggregate Eligible Utilities Costs committed to date for each Cash Allowance Item and the aggregate for all Cash Allowance Items;
 - (ii) itemized and aggregate Eligible Utilities Costs spent to date for all Cash Allowance Items and the aggregate for all Cash Allowance Items;
 - (iii) the projected Eligible Utilities Costs for each remaining Cash Allowance Item and the aggregate for all Cash Allowance Items, and the projected effect of such Eligible Utilities Costs on the Cash Allowance Account.
 - (d) In addition to the monthly report described in Section 23.5(c), Project Co shall, on a monthly basis, provide to the Ministry Representative a request for payment approval (each, a “**Request for Payment Approval**”) that includes the following information:
 - (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation;
 - (ii) evidence that the Cash Allowance Items for which payment approval is sought are solely in respect of Eligible Utilities Costs;
 - (iii) evidence that the commitment by Project Co to purchase the Cash Allowance Items has been approved by the Ministry; and
 - (iv) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
 - (e) The Ministry shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. the Ministry shall be permitted to withhold its approval if the Ministry determines that the Request for Payment Approval does not contain the information that the Ministry requires, acting reasonably, to discharge its obligations under this Section 23.5 or in respect of any Cash Allowance Items that are not Eligible Utilities Costs. If the Ministry withholds its approval pursuant to this Section 23.5(e) and subsequently receives the information that the Ministry requires, acting reasonably, to discharge its obligations under this Section 23.5, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, the Ministry's approval of the undisputed Eligible Utilities Costs set out in the aforementioned Request for Payment Approval.
 - (f) The eligibility of any amounts as Eligible Utilities Costs shall be verified by the Independent Certifier. Any Dispute between the Ministry and Project Co as to such eligibility will be referred for determination to the Dispute Resolution Procedure.

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- (g) Upon approval by the Ministry of the Eligible Utilities Costs set out in a Request for Payment Approval, Project Co shall make payment in respect of such Eligible Utilities Costs to the relevant vendors or each Project Co Party, as applicable, from the Cash Allowance Account.
- (h) Project Co acknowledges and agrees that:
- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with any Cash Allowance Items, provided that this restriction shall not apply to lump sum or unit rate contracts with Project Co Parties (other than the Construction Contractor or any of its Affiliates or any Affiliates of any joint venture member of the Construction Contractor);
 - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with any Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
 - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
 - (iv) the Initial Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.
- (i) In the event that payments, including applicable PST and/or GST, for invoices and/or payments in respect of Cash Allowance Items are required to be made to vendors and/or Project Co Parties, as the case may be, in advance of the date or dates set forth in the Financial Model at Financial Close for deposit by Project Co of the Initial Cash Allowance Amount into the Cash Allowance Account, then, notwithstanding that there may be insufficient funds in the Cash Allowance Account at such time, Project Co, and not the Ministry, shall make payments to vendors and/or Project Co Parties in respect of all invoices for Cash Allowance Items approved in writing by the Ministry pursuant to this Section 23.5, provided that payments in excess of the amount representing the Initial Cash Allowance Amount (for clarity, determined on an aggregate basis across all Cash Allowance Items) shall be made in accordance with Section 23.5(b)(vi).

23.6 Rights of Ministry

- (a) The Ministry may enter into Utility Agreements in respect of New Utility Work (each a “**New Utility Agreement**”) or amendments to any Utility Agreements (which may include the grant of new Encumbrances or the amendment of existing Encumbrances affecting the Bypass, the Site and the Lands or any part thereof) after Commercial Close to permit or facilitate the design, construction, installation, operation, repair, management, maintenance, rehabilitation, reconstruction and/or relocation of any existing or new Utilities. If the Ministry enters into any such New Utility Agreement or amended Utility Agreement that affects the Bypass, the Site or the Lands or the conduct of the Project Operations:

- (i) the Ministry will give notice to Project Co and provide Project Co with particulars of the effect of the New Utility Agreement or amended Utility Agreement as it relates to the Bypass, the Site or the Lands and the conduct of the Project Operations; and
- (ii) the Ministry will include provisions in the New Utility Agreement or amended Utility Agreement requiring the Utility Company to use reasonable commercial efforts in exercising its rights thereunder as they relate to the Bypass, the Site or the Lands so as to avoid or, if unavoidable, minimize physical disruption to the operation of, or physical damage to, the Bypass.

24. INDEPENDENT CERTIFIER

24.1 Engagement

- (a) On or prior to Financial Close, the Parties shall agree upon and, in accordance with Ministry procurement policies, engage an independent, suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 24.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

24.2 Role of Independent Certifier

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 - Independent Certifier Agreement.

24.3 Changes to Terms of Engagement

- (a) Neither the Ministry nor Project Co shall without the other's prior written approval:
 - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

24.4 Right to Change Independent Certifier

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project

Agreement unless agreed to in writing by both Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days notice to the Independent Certifier. If such notice is given, then, pursuant to Section 24.7, a new Independent Certifier will be engaged. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is engaged.

24.5 Cooperation

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

24.6 Payment of Independent Certifier

- (a) Project Co and the Ministry shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

24.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to engage a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The Parties shall agree upon and, in accordance with Ministry procurement policies, engage such replacement and the terms of his/her engagement shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's engagement being terminated, then a replacement Independent Certifier shall be chosen as follows:
 - (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
 - (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

25. COMMISSIONING AND COMPLETION**25.1 Commissioning Activities**

- (a) Project Co shall perform all Project Co Commissioning, and shall support and facilitate the performance of all required commissioning by the Ministry, as set forth in this Section 25 and in Schedule 16 - Commissioning in respect of Phase One Substantial Completion and Phase One Final Completion, and Substantial Completion and Final Completion, as applicable.

25.2 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Ministry Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Phase One Substantial Completion or Substantial Completion, as applicable, shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the Ministry Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Phase One Substantial Completion or Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Phase One Substantial Completion or Substantial Completion, as applicable, together with Project Co's opinion as to whether the conditions for issuance of the Phase One Substantial Completion Certificate or Substantial Completion Certificate have been satisfied.
- (c) The Ministry shall, within 5 Business Days after receipt of a Substantial Completion Notice, provide the Independent Certifier and Project Co with the Ministry's opinion as to whether the conditions for issuance of the Phase One Substantial Completion Certificate or Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Phase One Substantial Completion Certificate or Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of the Ministry's opinion pursuant to Section 25.2(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Phase One Substantial Completion Certificate or Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and the Ministry, to determine whether any Minor Deficiencies exist, and to issue to the Ministry and to Project Co either:
- (i) the Phase One Substantial Completion Certificate or the Substantial Completion Certificate, setting out in such certificate the Phase One Substantial Completion Date or the Substantial Completion Date, as applicable, and the Minor Deficiencies List (if applicable) in accordance with Section 25.4; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Phase One Substantial Completion Certificate or the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.2(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 22 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Ministry Representative with:

- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 25.2(c) to (e), inclusive, shall be repeated until the Phase Substantial Completion Certificate or Substantial Completion Certificate has been issued.

- (f) The Independent Certifier's decision to issue the Phase One Substantial Completion Certificate or the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Phase One Milestone Payment Date or the Substantial Completion Payment Commencement Date, as applicable, and a Dispute in relation to the Phase One Milestone Payment Date or the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to Schedule 22 - Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Phase One Substantial Completion Certificate or the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

25.3 Countdown Notice

- (a) Project Co shall deliver a notice (a "**Countdown Notice**") to the Ministry and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Phase One Substantial Completion Date or on or before the Scheduled Substantial Completion Date, as applicable) on which Project Co anticipates that Phase One Substantial Completion or Substantial Completion will be achieved (the "**Anticipated Phase One Substantial Completion Date**" or "**Anticipated Substantial Completion Date**", as applicable).
- (b) The Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Phase One Substantial Completion Date or Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 days prior to the Scheduled Phase One Substantial Completion Date or the Scheduled Substantial Completion Date, the Anticipated Phase One Substantial Completion Date or the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Phase One Substantial Completion Date or the Scheduled Substantial Completion Date, as applicable.
- (c) In accordance with Section 22.4(a), the Anticipated Phase One Substantial Completion Date or the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Phase One Substantial Completion Date or the Substantial Completion Date, as applicable, without the prior written consent of the Ministry, in its discretion.

25.4 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and the Ministry, shall, within 15 Business Days of Project Co's application, prepare a list of all Minor Deficiencies (the

“**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.

- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any lane closures, traffic diversions or restrictions or other impairment of the public’s use and enjoyment of the Bypass or the relevant portion thereof, or disruption of the Project Operations or of the operations of the Ministry, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic Management Plan.
- (c) The Independent Certifier must prepare the Minor Deficiencies List before the Phase One Substantial Completion Certificate or the Substantial Completion Certificate is issued, but shall not withhold the Phase One Substantial Completion Certificate or the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) The Ministry may, in its discretion, waive any requirement for Phase One Substantial Completion or Substantial Completion, provided that the failure to meet any such requirement shall constitute a Minor Deficiency.

25.5 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the Ministry Representative and so as to minimize, to the greatest extent reasonably possible, any lane closures, traffic diversions or restrictions or other impairment of the public’s use and enjoyment of the Bypass or any portion thereof or disruption of the Project Operations or of the operations of the Ministry, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic Management Plan, complete and rectify all Minor Deficiencies within 365 days of the issuance of the applicable Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Bypass or any portion thereof and to ensure compliance with the Traffic Management Plan.

25.6 Failure to Rectify Minor Deficiencies

- (a) If Project Co has failed to complete and rectify any Minor Deficiency specified in the Minor Deficiencies List
- (i) within 365 days of the issuance of the Minor Deficiencies List for all Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
 - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such a time has been specified in the Minor Deficiencies List by the Independent Certifier,
- the Ministry may:
- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is of the amount estimated by the Independent Certifier for the Ministry to complete and rectify all such Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
 - (iv) engage others to perform the work necessary to complete and rectify any such Minor Deficiency, at the risk and cost of Project Co, and the Ministry may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of all Minor Deficiencies in connection with Phase One Substantial Completion or Substantial Completion, as applicable, the Ministry shall release to Project Co the then remaining amount of the relevant holdback, together with all interest accrued thereon. Where the Ministry exercises its rights pursuant to Section 25.6(a)(iv), if the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse the Ministry for all such excess cost.

25.7 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Ministry Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Phase One Final Completion or Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the Ministry Representative notice (a "**Final Completion Notice**") upon the satisfaction of all requirements for Phase One Final Completion or Final Completion, as applicable, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Phase One Final Completion or Final Completion, including the completion and rectification of all Minor Deficiencies and the time required for completion of all Minor Deficiencies (other than any outstanding seasonal work), the time required for completion of any outstanding seasonal work and the submission of all records and data as set forth in Section 3 of Schedule 16 - Commissioning, together with Project Co's opinion as to whether the conditions for issuance of the Phase One Final Completion Certificate or the Final Completion Certificate have been satisfied.
- (c) The Ministry shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with the Ministry's opinion as to whether the conditions

for issuance of the Phase One Final Completion Certificate or the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Phase One Final Completion Certificate or the Final Completion Certificate should not be issued.

- (d) Within 5 Business Days after Project Co's receipt of the Ministry's opinion pursuant to Section 25.7(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Phase One Final Completion Certificate or the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and the Ministry, and to issue to the Ministry and to Project Co either:
- (i) the Phase One Final Completion Certificate or the Final Completion Certificate, setting out in such certificate the Phase One Final Completion Date or the Final Completion Date, as applicable; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Phase One Final Completion Certificate or the Final Completion Certificate, including any items on the Minor Deficiencies List which remain outstanding other than any outstanding seasonal work identified in the Final Completion Notice.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.7(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 22 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Ministry Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 25.7(c) to (e), inclusive, shall be repeated until the Phase One Final Completion Certificate or the Final Completion Certificate, as applicable, has been issued.
- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Phase One Final Completion Certificate or the Final Completion Certificate may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, the Ministry may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to the Ministry the costs incurred by the Ministry to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

25.8 Effect of Certificates/Use

- (a) The issue of the Phase One Substantial Completion Certificate, the Substantial Completion Certificate, the Phase One Final Completion Certificate or the Final Completion Certificate, the commencement of use by the Ministry or the public of any part of the Bypass under the terms of this Project Agreement or the commencement of any Governmental Activities shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or
 - (ii) be construed as an approval by the Ministry of the Works or the way in which they have been carried out.

25.9 Post-Completion Survey

- (a) Not more than 90 days after the Final Completion Date, Project Co shall cause an up-to-date topographical and an up-to-date legal survey of the Lands to be completed by a duly qualified surveyor using the most current version of CAD software and delivered to the Ministry.

26. OM&R WORK

26.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the OM&R Work:
 - (i) so as to satisfy the Technical Requirements; and
 - (ii) in accordance with the other terms of this Project Agreement.

26.2 Commencement of OM&R Work

- (a) Project Co shall commence the OM&R Work on the day immediately after the Substantial Completion Date and shall perform the OM&R Work until the end of the Operational Term.

26.3 Equipment for OM&R Work

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to perform the OM&R Work.

27. HUMAN RESOURCES

27.1 Admittance of Personnel

- (a) The Ministry shall have the right to order the removal from the Site and/or the Bypass of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of the Ministry is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of the Ministry is not a fit and proper person to be at the Site and/or the Bypass for any reason, including a failure to comply

with any Ministry policy or any immediate obligation of the Ministry to ensure the safety and well being of persons at the Site and/or the Bypass.

27.2 Confirmation of Action

- (a) Any action taken under Section 27.1 shall promptly be confirmed by the Ministry to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

27.3 Finality as to Admission

- (a) Any decision of the Ministry made pursuant to Section 27.1 shall be final and conclusive.

27.4 Staff Competency

- (a) Project Co shall ensure that:
 - (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Project Operations with the requisite level of skill and experience to perform the Project Operations in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to complete the Works in accordance with the Works Schedule and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the OM&R Work;
 - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements; and
 - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations to ensure the proper performance of this Project Agreement.

27.5 Background Checks

- (a) The Ministry may, at any time, in its discretion, conduct Background Checks, or require Project Co to conduct (at the Ministry's expense) Background Checks on any Project Co Person.

27.6 Disciplinary Action

- (a) The Ministry, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Lands or at work is otherwise considered by the Ministry to be undesirable, to constitute a threat to the health and/or safety of any of the users of the Lands and/or Bypass Users or which the Ministry considers may potentially compromise the reputation

or integrity of the Ministry and/or any MHI Party or the nature of the Province of Saskatchewan's highway system, so as to negatively affect public perception of that system. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise the Ministry in writing of the outcome of any disciplinary action taken in respect of such person.

27.7 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Project Operations (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to the Ministry on a timely basis.

27.8 Management Organizations

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to the Ministry, as required to keep such information current, the names of the management teams responsible for the performance of the Project Operations.

27.9 First Nations and Métis Procurement and Employment Opportunities

- (a) Project Co shall, not later than twenty (20) Business Days following Substantial Completion, deliver to the Ministry Representative for the Ministry's review and approval an updated First Nations and Métis Bypass Project Engagement Plan that describes how Project Co will, during the Operational Term:
 - (i) use commercially reasonable efforts to procure services relating to the OM&R Work from:
 - (A) First Nations and Métis individuals;
 - (B) First Nations- and Métis-controlled corporations or other like entities or organizations; and
 - (C) joint ventures that include First Nations- and Métis-controlled corporations or other like entities or organizations,provided such services are provided on a commercially competitive and timely basis;
 - (ii) explore ways to make apprenticeship programs available to First Nations and Métis individuals and to promote greater participation in such programs; and
 - (iii) explore other means of providing employment training to First Nations and Métis individuals.
- (b) The Ministry Representative shall provide comments on such updated First Nations and Métis Bypass Project Engagement Plan within 15 Business Days of receipt of the plan. Project Co will,

acting reasonably, take account of the Ministry Representative's comments in developing the updated First Nations and Métis Bypass Project Engagement Plan and deliver to the Ministry Representative a revised plan (if applicable) within 15 Business Days of receiving the Ministry Representative's comments. Project Co will implement the updated First Nations and Métis Bypass Project Engagement Plan as approved by the Ministry Representative.

- (c) Project Co shall report to the Ministry on an annual basis the results of the foregoing initiatives in sufficient detail to demonstrate compliance with this Section 27.9.

28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS

28.1 Standards

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Subcontractor in connection with the Project Operations to be:
- (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Technical Requirements and Good Industry Practice;
 - (ii) of the type specified in the Technical Requirements, if applicable; and
 - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the Ministry Representative, supply to the Ministry Representative evidence to demonstrate its compliance with this Section 28.1(a).

28.2 Stocks

- (a) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Project Agreement.

29. DAMAGE AND DESTRUCTION

29.1 Restoration and Reinstatement of Damage or Destruction

- (a) Unless this Project Agreement is terminated in accordance with its terms (including under Section 44.3, Section 46.1, Section 46.2 or Section 46.3), if all or any part of the Bypass is damaged or destroyed, Project Co shall, at its own cost and expense, repair or replace, as applicable, the Bypass or such part of the Bypass, as applicable (the "**Reinstatement Work**") promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the Bypass shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from the Ministry.

29.2 Reinstatement Plan

- (a) If the Reinstatement Work is reasonably estimated to cost more than (index linked) or in any other case where the Ministry Representative, having regard to the nature of the damage or

destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the Ministry Representative acting reasonably considers that the continued application of the Design and Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Ministry Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Ministry Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Ministry Representative pursuant to Schedule 9 - Review Procedure a plan (a “**Reinstatement Plan**”) prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:

- (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
- (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
- (iii) the information required pursuant to Schedule 19 - Variations as if such plan were an Estimate;

and the Reinstatement Work must not be commenced until the Ministry Representative consents thereto in accordance with Schedule 9 - Review Procedure except to the extent necessary to address any Emergency or public safety needs.

29.3 Conduct of Reinstatement Work

- (a) Project Co shall cause the Reinstatement Work to be carried out in accordance with the Technical Requirements and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the Ministry Representative in accordance with Schedule 9 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Certification Procedure. If requested by the Ministry Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to the Ministry) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with the Ministry in substantially the same forms as the Construction Contract and the Construction Contractor’s Direct Agreement.
- (b) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 25 - Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.

30. MONITORING

30.1 Monitoring of Performance

- (a) Project Co shall monitor the performance of the OM&R Work in the manner and at the frequencies set out in the Technical Requirements and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations as set out in the Technical Requirements and the Payment Mechanism, Project Co shall, as reasonably requested by the Ministry, provide the Ministry Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) The Ministry may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

30.2 Failure Points

- (a) In each Payment Period, Project Co shall measure the performance of the OM&R Work, and based on the performance of the OM&R Work in the applicable Payment Period, Failure Points may be awarded in respect of the OM&R Work in accordance with the Payment Mechanism.

30.3 Warning Notices

- (a) Without prejudice to the Ministry's rights under Section 44 and any other rights under this Project Agreement, if Project Co accrues Failure Points or more in respect of Quality Failures in any one Payment Period, then the Ministry may give written notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice".

30.4 Monitoring Notices

- (a) Without prejudice to the Ministry's rights under Section 44 and any other rights under this Project Agreement, if Project Co accrues Failure Points or more in respect of Quality Failures in any rolling 3 Payment Periods, the Ministry may, by notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement until such time as Project Co shall have demonstrated to the reasonable satisfaction of the Ministry that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant OM&R Work.
- (b) The Ministry may give a Warning Notice pursuant to Section 30.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
 - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;

- (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that the Ministry was not entitled to give the Monitoring Notice, Project Co shall, within 7 Business Days of the receipt of the Monitoring Notice, notify the Ministry in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
 - (iii) if Project Co gives the Ministry a notice under Section 30.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of the Ministry's receipt of such notice, may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, the Ministry may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 30.4(c)(iii);
 - (v) if it is determined in accordance with Schedule 22 - Dispute Resolution Procedure that the Ministry was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse the Ministry for any reasonable costs and expenses incurred by or on behalf of the Ministry in relation to the giving of such Monitoring Notice; and
 - (vi) if it is determined in accordance with Schedule 22 - Dispute Resolution Procedure that the Ministry was not entitled to give the applicable Monitoring Notice, the Ministry shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of the Ministry that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar OM&R Work, Project Co may apply for the withdrawal of such Monitoring Notice. If the Ministry is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 22 - Dispute Resolution Procedure that the Ministry was not entitled to give any Monitoring Notice, the Ministry shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

31. MINISTRY'S REMEDIAL RIGHTS**31.1 Exercise of Remedial Rights**

- (a) The Ministry may exercise all rights set out in this Section 31 at any time and from time to time if:
- (i) The Ministry, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
- (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any Bypass User or Province Person;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the OM&R Work or the availability of the Bypass to Bypass Users;
 - (C) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or
 - (D) may potentially compromise the reputation or integrity of the Ministry and/or any MHI Party or the nature of the Province of Saskatchewan's highway system, so as to negatively affect public perception of that system,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 31.1(a)(i)(A), 31.1(a)(i)(B) and 31.1(a)(i)(C), the Ministry shall not exercise its rights under this Section 31 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from the Ministry or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 31.1(a)(i)(A), 31.1(a)(i)(B) and 31.1(a)(i)(C) actually occur; and
- (F) in respect of Section 31.1(a)(i)(D), the Ministry shall not exercise its rights under this Section 31 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from the Ministry or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

- (ii) Project Co accrues the following number of Failure Points or more:
 - (A) in any one (1) Payment Period, Failure Points in respect of Quality Failures; and
 - (B) in any rolling three (3) Payment Periods, Failure Points in respect of Quality Failures;
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar OM&R Work;
- (iv) an IMS Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or OM&R Work as provided in the Technical Requirements;
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations, the Governmental Activities or the availability of the Bypass to Bypass Users;
- (vi) the Ministry has received a notice under the O&M Provider's Direct Agreement that entitles the Ministry to exercise step-in rights thereunder; or
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of the Ministry (or any designate appointed pursuant to Section 62.1).

31.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, the Ministry may exercise all of the rights set out in this Section 31 at any time and from time to time during the Operational Term if the Ministry, acting reasonably, considers the circumstances to constitute an Emergency.

31.3 Rectification

- (a) Without prejudice to the Ministry's rights under Section 44 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 31.1 or 31.2, the Ministry may, by written notice, require Project Co to take such steps as the Ministry, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with the Ministry's requirements as soon as reasonably practicable.
- (b) If the Ministry gives notice to Project Co pursuant to Section 31.3(a) and either:
 - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event the Ministry is entitled to exercise step-in rights under the O&M Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to the Ministry to

mitigate, rectify and protect against such circumstances that the Ministry may accept or reject acting reasonably; or

- (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as the Ministry, acting reasonably, shall think fit,

then the Ministry may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the O&M Provider's Direct Agreement and/or the CPPRW Contractor's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant OM&R Work to the standards required by this Project Agreement, and the provisions of Section 41, including Section 41.1(a)(iv) and Section 41.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 31.3, in the event of an Emergency, the notice under Section 31.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and the Ministry may, prior to Project Co's confirmation under Section 31.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where the Ministry considers it to be necessary to do so, the steps which the Ministry may take pursuant to this Section 31.3 subsequent to the provision of the notice under Section 31.3(a) unless the notice is given at a later time as provided in Section 31.3(c), may, at the Ministry's option, include the partial or total suspension of Project Co's right and obligation to perform any OM&R Work having regard to the circumstances in question (without any extension of the Project Term or suspension of any other OM&R Work, and the provisions of Section 41, including Section 41.1(a)(iv) and Section 41.2, shall apply, but such suspension shall be only for so long as, as applicable:
 - (i) the circumstances referred to in Section 31.1 or 31.2 subsist; or
 - (ii) in respect of any such circumstances relating to Project Co's performance of the OM&R Work, until such time as Project Co shall have demonstrated to the reasonable satisfaction of the Ministry that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 31.3 and as are necessary to be capable of performing its obligations in respect of the relevant OM&R Work to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

31.4 Costs and Expenses

- (a) Subject to the Ministry's obligations pursuant to Sections 31.5 and 31.6:
 - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of the Ministry's rights pursuant to this Section 31; and
 - (ii) Project Co shall reimburse the Ministry for all reasonable costs and expenses incurred by the Ministry in relation to the exercise of the Ministry's rights pursuant to this Section 31.

31.5 Reimbursement Events

- (a) In this Section 31.5, a “**Reimbursement Event**” means:
- (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a Province Person;
 - (ii) a labour dispute involving employees of any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations; or
 - (iii) an Emergency.
- (b) If the Ministry either takes steps itself or requires Project Co to take steps in accordance with this Section 31 as a result of a Reimbursement Event:
- (i) the Ministry shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of the Ministry’s rights pursuant to this Section 31 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) subject to Section 31.5(c), the Ministry shall bear all costs and expenses incurred by the Ministry in relation to the exercise of the Ministry rights pursuant to this Section 31.
- (c) If, in exercising its rights pursuant to this Section 31, the Ministry performs any part of the OM&R Work either itself or by engaging others, the Ministry shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such OM&R Work. If the Ministry makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 31.4(a)(ii) up to the amount equal to the deduction.

31.6 Reimbursement if Improper Exercise of Rights

- (a) If the Ministry exercises its rights pursuant to this Section 31, but the Ministry was not entitled to do so, the Ministry shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of the Ministry issued as a result of the Ministry having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not the Ministry is entitled to exercise its rights pursuant to this Section 31 before taking any such action that the Ministry may require and Project Co shall comply with all of the Ministry’s requirements. Only concurrently with or after complying with the Ministry’s requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

32. PAYMENT**32.1 Lump Sum Payments**

- (a) The Ministry shall pay to Project Co the Phase One Milestone Payment, which shall be exclusive of GST and inclusive of all applicable PST, on the Phase One Milestone Payment Date.
- (b) The Ministry shall pay to Project Co the Substantial Completion Payment, which shall be exclusive of GST and inclusive of all applicable PST, on the Substantial Completion Payment Commencement Date.

32.2 Monthly Service Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 32 and Schedule 18 - Payment Mechanism, the Ministry shall pay to Project Co the all-inclusive Monthly Service Payments for the performance of all of the Project Operations.

32.3 Payment Adjustments

- (a) Project Co acknowledges and agrees that:
 - (i) the amount of the Phase One Milestone Payment and the Substantial Completion Payment may be adjusted pursuant to Schedule 30 – Construction Period Performance, including, for certainty, for Construction Period Deductions;
 - (ii) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 18 - Payment Mechanism; and
 - (iii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 18 - Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the Ministry to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits the Ministry to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

32.4 Payment Commencement

- (a) Subject to and in accordance with this Project Agreement, the Ministry shall pay Project Co the Monthly Service Payments calculated as being due to Project Co in respect of each Payment Period following the Substantial Completion Payment Commencement Date in accordance with Schedule 18 - Payment Mechanism.
- (b) Project Co shall not be entitled to any Monthly Service Payments for any period prior to the Substantial Completion Payment Commencement Date.

32.5 Adjustments to Payment Periods

- (a) The Service Payment payable in respect of each of the first Contract Month and the last Contract Month shall be adjusted in accordance with Schedule 18 - Payment Mechanism.

32.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to the Ministry an invoice for the amount of the Monthly Service Payment owing by the Ministry to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 18 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as the Ministry may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
- (i) the Monthly Service Payment payable in respect of the applicable Payment Period;
 - (ii) any adjustments to the Monthly Service Payment set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by the Ministry;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 22 - Dispute Resolution Procedure;
 - (iv) any amount owing to the Ministry under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement;
 - (vi) the net amount owing by the Ministry to Project Co, or by Project Co to the Ministry, as applicable; and
- (d) GST and PST shall be shown separately on all invoices from Project Co, together with Project Co's GST registration number.
- (e) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (f) The Ministry Representative shall review each invoice submitted in accordance with this Section 32.6. The Ministry shall pay the amount stated in such invoice on the first Business Day of the Payment Period next following the Payment Period in which the invoice is received. Any such payment shall be subject to adjustment pursuant to Section 32.6(j).
- (g) The Ministry shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, the Ministry shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Substantial Completion Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 32.6(h) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment

Report later than the stipulated date in Section 32.6(h), the Ministry's obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to the Ministry.

- (h) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to the Ministry:
 - (i) a Performance Monitoring Report in respect of the Payment Period just ended (as further described in Part 8 of Schedule 14 - Integrated Management System); and
 - (ii) a report (a "**Payment Adjustment Report**") setting out any adjustments required between the actual Monthly Service Payments determined by Project Co to be owing by the Ministry to Project Co in respect of the Payment Period just ended and the amount that was paid by the Ministry during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures.
- (i) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (j) Within 10 Business Days of receipt by the Ministry of the Payment Adjustment Report, the Ministry Representative shall:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by the Ministry, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (ii) if the Ministry disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the Ministry is reasonably able to quantify it) which the Ministry disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Ministry shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 32.9.

32.7 Electronic Invoicing

- (a) Project Co shall cooperate with the reasonable requirements of the Ministry, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with the Ministry's information systems.

32.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, the Ministry shall estimate, acting reasonably, the adjustments to the Monthly Service Payments for

each such Payment Period. The Ministry may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.

- (b) Within 10 Business Days of receipt by the Ministry of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the Ministry Representative shall either:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by the Ministry and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount the Ministry previously paid in respect of the applicable Payment Period. Based on such reconciliation, either the Ministry or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if the Ministry disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the Ministry is reasonably able to quantify it) which the Ministry disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Ministry Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount the Ministry previously paid in respect of the applicable Payment Period. Based on such reconciliation, either the Ministry or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that the Ministry shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 32.9.

32.9 Disputes

- (a) If the Ministry, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the Ministry is reasonably able to quantify it) which the Ministry disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by the Ministry that is determined not to have been payable shall be paid forthwith by Project Co to the Ministry, and Project Co shall indemnify and hold harmless the Ministry from and against any damages suffered or incurred resulting from such overpayment by the Ministry as provided for at Section 55.1(e) on the basis that the due date was the date of the overpayment by the Ministry. Following resolution of the Dispute, any amount which has been withheld by the Ministry that is determined to have been payable shall be paid forthwith by the Ministry to Project Co and the Ministry shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such withholding by the Ministry as provided for at Section 55.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

32.10 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.

32.11 Manner of Payment

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.
- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

32.12 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) the Ministry to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 55) which are due to the Ministry by Project Co pursuant to the terms of this Project Agreement; and
 - (ii) Project Co to set off against any amounts otherwise due to the Ministry pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 55) which are due to Project Co by the Ministry pursuant to the terms of this Project Agreement.

32.13 Effect of Payment

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

32.14 Audit of Performance and Payment

- (a) Without limiting the Ministry's rights and Project Co's obligations pursuant to Section 35.2, at any time and from time to time until 365 days after the Termination Date, the Ministry may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to the Ministry within the 7 year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.
- (b) The Ministry shall appoint an auditor to perform and complete such audit at the Ministry's cost and expense and pursuant to terms of reference determined by the Ministry.

- (c) Within a reasonable time following receipt of a notice referred to in Section 32.14(a), Project Co shall make available to the Ministry's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) The Ministry shall notify Project Co of the results of the audit, and if the Ministry's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 22 - Dispute Resolution Procedure:
 - (i) Project Co shall:
 - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
 - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by the Ministry, reimburse the Ministry for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
 - (I) the actual costs relating to the auditor and audit; or
 - (II) an amount equal to the amount of any overpayment;
 - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by the Ministry, Project Co shall reimburse the Ministry for the amount of such overpayment and, further, shall indemnify and hold harmless the Ministry from and against any damages suffered or incurred resulting from such overpayment by the Ministry as provided for at Section 55.1(e) on the basis that the due date was the date of the overpayment by the Ministry; and
 - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by the Ministry, whether or not material, the Ministry shall pay Project Co the amount of such underpayment and, further, shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such underpayment by the Ministry as provided for at Section 55.2(c) on the basis that the due date was the date of the underpayment by the Ministry.

32.15 No Other Entitlement

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

33. TAXES**33.1 Taxes**

- (a) All amounts specified in this Project Agreement are expressed exclusive of GST but inclusive of all other Taxes.

- (b) The Ministry shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or Bypass.

33.2 GST

- (a) The Ministry shall pay all applicable GST properly payable in accordance with the *Excise Tax Act* (Canada) by the Ministry upon and in connection with payments by the Ministry to Project Co under this Project Agreement.

33.3 PST

- (a) Project Co shall be required to register with the Ministry of Finance as a consumer under the *Provincial Sales Tax Act* (Saskatchewan) (the “**PST Act**”). Project Co shall provide to the Ministry evidence that all Project Co Parties that, in the course of performing the Project Operations, will be consuming or using tangible personal property in the Province and/or bringing tools and equipment into the Province are resident in the Province of Saskatchewan or have maintained a permanent place of business in Saskatchewan for at least 12 months preceding the date of the Project Agreement or have deposited payment security with the Ministry of Finance in accordance with Section 29(1) of the PST Act.
- (b) Applicable PST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination.
- (c) In the event that the Ministry is or becomes obligated, in connection with this Project Agreement, to collect from Project Co and remit any amounts in respect of PST or harmonized sales tax, then Project Co shall pay such amounts to the Ministry within thirty (30) days of receipt by Project Co of an invoice for such amounts containing the information required by the applicable legislation. Project Co acknowledges and agrees that any amounts paid by Project Co to the Ministry pursuant to this Project Agreement (including payments in kind in the form of property or services) are exclusive of PST (as applicable).
- (d) If Project Co fails to provide evidence satisfactory to the Ministry, acting reasonably, that all Project Co Parties are resident in the Province of Saskatchewan, have maintained a permanent place of business in Saskatchewan for at least 12 months preceding the date of the Project Agreement or have deposited appropriate security as provided in Section 33.3(a), the Ministry shall be entitled to withhold and retain from the Phase One Milestone Payment or Substantial Completion Payment, as applicable, an amount equal to the tax imposed by the PST Act in respect of the tangible personal property consumed or used pursuant to or in the performance of the Project Agreement. Upon:
- (i) the issuance of the Phase One Certificate of Substantial Completion or Certificate of Substantial Completion, as applicable; and
 - (ii) Project Co delivering to the Ministry a clearance certificate from the Ministry of Finance evidencing that Project Co and all Project Co Parties have paid all required PST amounts,
- the Ministry shall release and pay to Project Co, without interest or deduction, the relevant amounts so withheld and retained.

33.4 Changes in Scope of GST or PST

- (a) If, as a result of a Change in Law, the provision of any goods or services by Project Co in connection with the performance of the Project Operations that was not subject to GST or PST becomes subject to GST or PST, as applicable, the Ministry will pay to Project Co the amount of such GST or PST as may be exigible.

33.5 Changes in Rate of PST

- (a) If, as a result of a Change in Law, the rate of PST chargeable to the Ministry in respect of or relating to the supply of any goods or services by Project Co in connection with the performance of the Project Operations is increased, the Ministry will pay to Project Co, for each Payment Period thereafter, an amount on account of or in respect of such PST, calculated at a rate which is equal to the difference between the rate in effect at the time of payment of the PST and the rate in effect immediately prior to the Change in Law.
- (b) If, as a result of a Change in Law, the rate of PST chargeable to the Ministry in respect of or relating to the supply of any goods or services by Project Co in connection with the performance of the Project Operations is decreased, Project Co will pay the Ministry, for each Payment Period thereafter, an amount on account of or in respect of such PST, calculated at a rate which is equal to the difference between the rate in effect immediately prior to the Change in Law and the rate in effect at the time of payment of the PST.

33.6 Changes in Recoverability of Tax Credits

- (a) The Ministry will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to the Ministry from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of Section 33.6(a), the term “**Irrecoverable Tax**” means GST or PST incurred by Project Co in respect of the supply of any good or service to the Ministry which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST (as the case may be), or after obtaining an input tax credit, is required to pay an additional amount to the Canada Revenue Agency or Ministry of Finance equal to all or part of the input tax credit claimed.
- (c) For the purposes of Section 33.6(a), the term “**Recoverable Tax**” means GST or PST incurred by Project Co in respect of the supply of any good or service to the Ministry which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST (as the case may be).

33.7 Information and Assistance Provided by Project Co

- (a) Project Co shall, at the Ministry's request and cost, assist the Ministry in applying for and obtaining all remissions and credits of GST or PST to which the Ministry is entitled.
- (b) The Ministry may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at the Ministry's cost, assist the Ministry in making any applications for such global or general exemption, waiver, remission or refund and shall provide the Ministry with such documentation as the Ministry may reasonably require to support such application and, in any event, shall provide such consent as the Ministry may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by the Ministry through such application shall accrue to the sole benefit of the Ministry.
- (c) Project Co will provide the Ministry with any information reasonably requested by the Ministry from time to time in relation to the GST or PST, as applicable, chargeable in accordance with this Project Agreement and payable by the Ministry to Project Co from time to time.

33.8 Residency – *Income Tax Act* (Canada)

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without the Ministry's prior written consent, which consent may be withheld in the Ministry's discretion.

33.9 Taxes – General

- (a) Project Co shall not, without the prior written consent of the Ministry (which consent may be withheld in its discretion), undertake any action or transaction that, if undertaken, would cause the Ministry or any MHI Party to have (or result in the Ministry or any MHI Party having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

33.10 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) the Ministry or any MHI Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the Ministry or any MHI Party under this Project Agreement or under any of the Project Documents, then the Ministry or any MHI Party shall be entitled to make any applicable deductions or withholdings from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) the Ministry or any MHI Party is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by the Ministry or any MHI Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) the Ministry or any MHI Party is or becomes required by Applicable Law to pay any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the Ministry or any MHI Party under this Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless the Ministry and the Ministry Parties for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by the Ministry or any MHI Party in respect of any amounts paid or credited by the Ministry or any MHI Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by the Ministry or any MHI Party (as applicable) in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date the Ministry makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the Ministry shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the Ministry. The Ministry shall be entitled to exercise its rights of set-off under Section 32.12 against any amounts owing under this indemnification.

34. FINANCIAL MODEL

34.1 Appointment of Custodian

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced person to act as the custodian for the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 - Custody Agreement.

34.2 Delivery and Use of Financial Model

- (a) In accordance with Schedule 2 - Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom) to the Ministry and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by the Ministry of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to the Ministry and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to the Ministry an irrevocable, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.

- (e) For greater certainty, Project Co acknowledges and agrees that the Ministry shall not be liable to Project Co for, and Project Co shall not seek to recover from the Ministry or any MHI Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

35. RECORDS, INFORMATION AND AUDIT

35.1 Records Provisions

- (a) Project Co shall comply with Schedule 13 - Record Provisions.

35.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Subcontractor to provide to the Ministry all information, reports, documents, records and the like, including as referred to in Schedule 13 - Record Provisions, in the possession of, or available to, Project Co as the Ministry may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor, the O&M Provider and the CPPRW Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to the Ministry, and shall require each Subcontractor, including the Construction Contractor, the O&M Provider and the CPPRW Contractor, to provide to the Ministry (at the Ministry's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 35.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as the Ministry may reasonably require from time to time to enable the Ministry to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Bypass, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide the Ministry with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations or the Bypass, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify the Ministry of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 13 - Record Provisions, which are required to be provided to or available to the Ministry hereunder, shall be subject and open to inspection and audit by the

Ministry at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless the Ministry and Project Co otherwise agree. The Ministry shall also have the right to monitor and audit the performance of any and all parts of the Project Operations wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of the Ministry monitoring and auditing such parts of the Project Operations, including providing them with access and copies (at the Ministry's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Project Operations. Except as otherwise provided herein, all of the Ministry's costs for the inspections, audits and monitoring shall be borne by the Ministry.

- (f) In conducting an audit of Project Co under Section 35.2(e) or as otherwise provided under this Project Agreement, the Ministry shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the Ministry's reasonable cost) of all books and records of Project Co required to be provided to or available to the Ministry hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with the Ministry and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with the Ministry all matters arising from such audits, including the refunding of monies to the Ministry where applicable. At the reasonable request of the Ministry's auditors, Project Co shall provide such information, reports, documents and records as the Ministry's auditors may reasonably require, other than Sensitive Information.
- (g) The Ministry's rights pursuant to this Section 35.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) The Ministry's rights pursuant to this Section 35.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. The Ministry's right pursuant to this Section 35.2 may also be exercised by the Provincial Auditor of Saskatchewan, Her Majesty the Queen in Right of Canada and the Auditor General of Canada without the requirement for further action on the part of the Ministry.

35.3 Delivery of Reports to SaskBuilds

- (a) During the Operational Term, in addition to Project Co's obligations pursuant to this Section 35, Project Co shall provide SaskBuilds with a copy of all reports required pursuant to the Project Agreement including, but not limited to, the Performance Monitoring Report, the Payment Adjustment Report, the Joint Insurance Cost Report and any other reports which are required to be delivered to the Ministry pursuant to this Project Agreement and which are requested by SaskBuilds.

36. CHANGES IN LAW

36.1 Performance after Change in Law

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

36.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 22 - Dispute Resolution Procedure; and
 - (iii) the Ministry shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 19 - Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) the Ministry shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
 - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 19 - Variation Procedure; provided that, notwithstanding the provisions of Schedule 19 - Variation Procedure, if one or more Works Change(s) in Law increase(s) the cost to Project Co of providing the Project Operations, Project Co shall only be entitled to payment or compensation for such costs as follows (for greater certainty, determined on an aggregate basis for all Works Changes in Law prior to the Termination Date):
 - (I) as to the first _____ of such costs, _____; and
 - (II) as to any such costs in excess of _____ of such costs.

36.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of

performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 36.3.

- (b) On the occurrence of a Relevant Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 22 - Dispute Resolution Procedure; and
 - (iii) the Ministry shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 19 - Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) the Ministry shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
 - (F) any entitlement to compensation payable shall be in accordance with this Section 36.3, and any calculation of compensation shall take into consideration, *inter alia*:

- (I) any failure by a Party to comply with Section 36.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Relevant Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount which Project Co or any Project Co Party recovers above the maximum insured amount required under this Project Agreement which is applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 39 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 36.3, and Section 40 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 36.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than (index linked) in that Contract Year, neither the Ministry nor Project Co shall be entitled to any payment or compensation pursuant to this Section 36.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 39 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

37. VARIATIONS

37.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 19 - Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 19 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of the Ministry to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the OM&R Work.
- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 19 - Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project

Co to minimize the cost and impact of Variations, including Variations as to scope of the Works or the OM&R Work.

37.2 Innovation and Value Engineering

- (a) Project Co acknowledges that the Ministry at all times desires to reduce the Monthly Service Payments and the overall cost to the Ministry of the Bypass and the Project Operations, and Project Co agrees to cooperate, explore and work with the Ministry in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to the Ministry.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by the Ministry;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the Governmental Activities.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable the Ministry to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request the Ministry to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the Ministry requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement (including any deviation from the Project Co Proposal Extracts), and the comparative advantages of each to Project Co and the Ministry;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by the Ministry must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by the Ministry to fully evaluate and consider the Innovation Proposal.
- (e) The Ministry shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:

- (i) a change in the Monthly Service Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Bypass or the OM&R Work, or the likelihood of successful completion of the Works or performance of the OM&R Work;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Bypass;
 - (iv) the Innovation Proposal will interfere with the relationship between the Ministry and third parties;
 - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed OM&R Work, as applicable;
 - (vi) the residual value of the Bypass is affected;
 - (vii) the Innovation Proposal materially affects the risks or costs to which the Ministry is exposed; or
 - (viii) any other matter the Ministry considers relevant.
- (f) The Ministry may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) The Ministry may, in its discretion, accept or reject any Innovation Proposal.
- (h) If the Ministry accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless the Ministry specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 37.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and the Ministry, and the Ministry's share of the net savings shall, as agreed by the Parties, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.

38. INFRASTRUCTURE WARRANTIES

38.1 Ministry Warranty - WRB Infrastructure Defects

- (a) An inspection of the Existing WRB Infrastructure shall be carried out by the Independent Certifier within 45 days following the later of Commercial Close and completion of the Existing WRB Infrastructure and, within 15 days following the completion of such inspection, the

Independent Certifier shall produce a list identifying in reasonable detail any WRB Defects and describing the remedial or other works required to rectify the same. Any Dispute between the Ministry Representative and the Project Co Representative as to the existence or nature of any WRB Defects or the remedial or other works required to rectify the same shall be referred for determination to the Dispute Resolution Procedure. The final list produced as aforesaid (the “**Defect List**”) shall be conclusive and binding on the Ministry and Project Co as to the existence and nature of any WRB Defects (other than WRB Latent Defects) and the remedial or other works required to rectify the same for all purposes of this Agreement.

- (b) The Ministry, at its cost, shall rectify or cause to be rectified any WRB Defect identified in the Defect List as soon as reasonably practicable following the production of the Defect List referred to in Section 38.1(a). The Ministry may in its discretion determine who will carry out such rectification works and, if the Ministry determines to retain an independent contractor to carry out such works, the procurement method to be employed in selecting and retaining such independent contractor. Without limiting the generality of the foregoing, the Ministry may in the exercise of its discretion as aforesaid determine to have such works carried out by an Additional Contractor or by Project Co pursuant to and in accordance with Section 38.1(c).
- (c) The Ministry may require Project Co to rectify any WRB Defect or otherwise perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any WRB Defect for which the Ministry is responsible and which would not otherwise be required under this Project Agreement, in which event any such rectification, alteration, addition, demolition, extension or variation shall, subject to and in accordance with Schedule 19 – Variation Procedure, result in a Variation.

38.2 Ministry Warranty - WRB Latent Defects

- (a) For a period of _____ following Commercial Close (the “**WRB Warranty Period**”), the Ministry shall be responsible for any WRB Latent Defects in respect of the Existing WRB Infrastructure, except to the extent contributed to by any Bypass User (other than a Province Person) or by any acts or omissions of Project Co or any Project Co Party.
- (b) Upon the discovery of any WRB Latent Defect in respect of the Existing WRB Infrastructure, Project Co shall promptly and in any event within 10 days of becoming aware of such WRB Latent Defect, inform the Ministry Representative, identifying the WRB Latent Defect in reasonable detail. Any Dispute between the Ministry Representative and the Project Co Representative as to the existence or nature of any WRB Latent Defects, or the remedial or other works required to rectify the same will be referred for determination pursuant to the Dispute Resolution Procedure.
- (c) Subject to Section 38.2(d), the Ministry, at its cost, shall rectify or cause to be rectified any WRB Latent Defect as soon as reasonably practicable after Project Co notifies the Ministry of the WRB Latent Defect. The Ministry may in its discretion determine who will carry out such works and, if the Ministry determines to retain an independent contractor to carry out such rectification works, the procurement method to be employed in selecting and retaining such independent contractor. Without limiting the generality of the foregoing, the Ministry may in the exercise of its discretion as aforesaid determine to have such works carried out by an Additional Contractor or by Project Co pursuant to and in accordance with Section 38.2(d).

- (d) The Ministry may require Project Co to rectify any WRB Latent Defect or otherwise perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any WRB Latent Defect for which the Ministry is responsible and which would not otherwise be required under this Project Agreement, in which event any such rectification, alteration, addition, demolition, extension or variation shall, subject to and in accordance with Schedule 19 – Variation Procedure, result in a Variation.

38.3 Project Co Warranty – Conveyed Infrastructure

- (a) For a period of _____ following Substantial Completion (the “**Conveyed Infrastructure Defects Warranty Period**”), Project Co shall be responsible for any Construction Defect in respect of the Conveyed Infrastructure, except to the extent contributed to by any acts or omissions of the Ministry, any MHI Party, the relevant Local Authority or any Local Authority Person.
- (b) Upon the discovery during the Conveyed Infrastructure Defects Warranty Period of any Construction Defect in respect of the Conveyed Infrastructure, the Ministry shall promptly inform the Project Co Representative and Project Co shall correct such Construction Defect at Project Co’s cost.
- (c) For a period from Substantial Completion to the expiry of the _____ in respect thereof (the “**Conveyed Infrastructure Latent Defects Warranty Period**”), Project Co shall be responsible for any Construction Latent Defect in respect of the Conveyed Infrastructure, except to the extent contributed to by any acts or omissions of the Ministry, any MHI Party, the relevant Local Authority, any Bypass User or any Local Authority Person.
- (d) Upon the discovery during the Conveyed Infrastructure Latent Defects Warranty Period of any Construction Latent Defect in respect of the Conveyed Infrastructure, the Ministry shall immediately inform the Project Co Representative and Project Co shall correct such Construction Latent Defect at Project Co’s cost.
- (e) In the event that the Ministry wishes Project Co to perform actions in respect of any Construction Latent Defect which are in addition to any actions required pursuant to Section 38.3(b) or Section 38.3(d), then the Ministry shall issue an instruction to Project Co specifying any action(s) the Ministry requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the Ministry’s cost pursuant to Section 38.3(f).
- (f) If, pursuant to Section 38.3(e), Project Co is required to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any Construction Latent Defect which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation shall, subject to and in accordance with Schedule 19 - Variation Procedure, result in a Variation.
- (g) In the event that the Ministry and Project Co do not agree as to the nature or extent of the Construction Latent Defect or of the actions to be performed by Project Co pursuant to Section 38.3(d) or 38.3(e), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and the Ministry, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person’s decision shall be final and binding on the Parties, except to

the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

39. DELAY EVENTS

39.1 Definition

- (a) For the purposes of this Project Agreement, “**Delay Event**” means any of the following events or circumstances only to the extent, in each case, that it affects the Works so as to cause a delay in achieving Phase One Substantial Completion by the relevant Scheduled Phase One Substantial Completion Date, or achieving Substantial Completion by the Scheduled Substantial Completion Date:
- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by the Ministry of any of the Ministry’s obligations under this Project Agreement (including any delay by the Ministry in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, or any delay by the Ministry in carrying out its obligations set forth in Schedule 9 - Review Procedure) except, in each case, to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) an uncovering of the Works pursuant to Section 21.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Design Data), unless such uncovering of the Works was reasonable in the light of other defects or non-compliance previously discovered by the Ministry in respect of the same or a similar component of the Works or subset of the Works;
 - (iv) a requirement pursuant to Sections 16.2(b)(i) or 16.2(d) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
 - (v) a requirement pursuant to Sections 16.3(c)(ii)(A) or 16.3(d) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
 - (vi) a requirement pursuant to Sections 16.4(a) or 16.4(b)(ii) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Species at Risk for which the Ministry is responsible, which alteration, addition, demolition, extension or variation in the Works, or

suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;

- (vii) a WRB Defect or WRB Latent Defect or rectification of a WRB Defect or WRB Latent Defect;
- (viii) subject to compliance by Project Co with the provisions of Section 9.7 and Schedule 29, the execution of Third Party Works on the Lands by Third Party Contractors in the circumstances described in Section 1.2(b) of Schedule 29;
- (ix) compliance by Project Co with its obligations under Section 23.4(d) with respect to a New Utility Agreement or amendment to an existing Utility Agreement entered into by the Ministry pursuant to Section 23.6, or any action taken by a Utility Company in the exercise of rights conferred upon it under any such New Utility Agreement or amendment;
- (x) a requirement pursuant to Section 11.1 of Schedule 22 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of the Ministry during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (xi) an event of Force Majeure;
- (xii) a Relief Event; or
- (xiii) a Relevant Change in Law.

39.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the Ministry Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the Ministry Representative and the Independent Certifier which shall include:
 - (i) a statement of which Delay Event the claim is based upon;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Phase One Substantial Completion Date or the Scheduled Substantial Completion Date, or both, as applicable; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the Ministry Representative and the Independent Certifier.

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- (c) The Ministry Representative shall, after receipt of written details under Section 39.2(a), or of further particulars under Section 39.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the Ministry Representative may reasonably consider necessary. Project Co shall afford the Ministry Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 39, the Ministry Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall issue a revised Scheduled Phase One Substantial Completion Date or a revised Scheduled Substantial Completion Date, or both, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
- (i) the date of receipt by the Ministry Representative of Project Co's notice given in accordance with Section 39.2(a) and the date of receipt of any further particulars (if such are required under Section 39.2(c)), whichever is later; and
 - (ii) the date of receipt by the Ministry Representative of any supplemental information supplied by Project Co in accordance with Section 39.2(b) and the date of receipt of any further particulars (if such are required under Section 39.2(c)), whichever is later.
- (e) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (f) If:
- (i) the Ministry Representative declines to fix a revised Scheduled Phase One Substantial Completion Date or Scheduled Substantial Completion Date or both, as applicable;
 - (ii) Project Co considers that a different Scheduled Phase One Substantial Completion Date or Scheduled Substantial Completion Date or both, as applicable should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,
- then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.

39.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and

- (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 39.

40. COMPENSATION EVENTS

40.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in 39.1(a)(ii), 39.1(a)(iii), 39.1(a)(iv), 39.1(a)(v), 39.1(a)(vi), 39.1(a)(vii), 39.1(a)(viii), 39.1(a)(ix) and 39.1(a)(x) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay, provided, however, that Project Co shall not be entitled to compensation pursuant to this Section 40 in respect of any rectification carried out by Project Co pursuant to Section 38.1(c) or Section 38.2(d).

40.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 40. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 19 - Variation Procedure, in the case of a Delay Event referred to in Section 39.1(a)(i);
 - (ii) Section 43, in the case of a Delay Event referred to in Section 39.1(a)(xi);
 - (iii) Section 42, in the case of a Delay Event referred to in Section 39.1(a)(xii); and
 - (iv) Section 36, in the case of a Delay Event referred to in Section 39.1(a)(xiii).
- (b) Subject to Sections 40.3 and 40.4, if it is agreed, or determined in accordance with Schedule 22 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by the Ministry to Project Co; provided, however, that:
 - (i) the Phase One Milestone Payment shall in no event be paid prior to the Phase One Substantial Completion Date; or
 - (ii) the Substantial Completion Payment shall in no event be paid prior to the Substantial Completion Date.

Project Co shall promptly provide the Ministry Representative with any information the Ministry Representative may require in order to determine the amount of such compensation.

- (c) If the Ministry is required to compensate Project Co pursuant to this Section 40.2, then the Ministry may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, the Ministry may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 19 - Variation Procedure shall apply.

40.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 40 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 40.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 40.

40.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount which Project Co or any Project Co Party recovers above the maximum insured amount required under this Project Agreement which is applicable to any such insurance policy.

41. EXCUSING CAUSES

41.1 Definition

- (a) For the purposes of this Project Agreement, "**Excusing Cause**" means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the OM&R Work:
- (i) the implementation of a Variation to the extent Project Co has identified any impact on the OM&R Work in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by the Ministry of any of the Ministry's obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of such Province Person and Project Co) to take commercially reasonable steps to perform its activities in a

manner which minimizes undue interference with Project Co's performance of the OM&R Work, except to the extent:

- (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 - Technical Requirements or was otherwise provided for in this Project Agreement; or
 - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
- (iv) the implementation of any action taken by the Ministry, or any suspension of Project Co's obligation to deliver all or any part of the OM&R Work, or the compliance by Project Co with instructions given by the Ministry, in each case in the circumstances referred to in Section 31;
 - (v) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between the Ministry and Project Co;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person;
 - (vii) the event referred to in Section 9.6(d), in the circumstances and to the extent referred to therein;
 - (viii) the occurrence of any Contamination for which the Ministry is responsible pursuant to Section 16.2;
 - (ix) the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites for which the Ministry is responsible pursuant to Section 16.3;
 - (x) the discovery of any Species at Risk for which the Ministry is responsible pursuant to Section 16.4;
 - (xi) compliance by Project Co with its obligations under Section 23.4(d) with respect to a New Utility Agreement or amendment to an existing Utility Agreement entered into by the Ministry pursuant to Section 23.5, or any action taken by a Utility Company in the exercise of rights conferred upon it under any such New Utility Agreement or amendment;
 - (xii) subject to compliance by Project Co with the provisions of Section 9.7 and Schedule 29, the execution of Third Party Works on the Lands by Third Party Contractors in the circumstances described in Section 1.2(c) of Schedule 29; and

- (xiii) a WRB Defect or WRB Latent Defect or rectification of a WRB Defect or WRB Latent Defect, provided, however, that any rectification carried out by Project Co pursuant to Section 38.1(c) or Section 38.2(d) shall not constitute grounds for an Excusing Cause.

41.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 41.3 and 41.4):
- (i) any failure by Project Co to perform, and any poor performance of, any affected OM&R Work shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such OM&R Work for the duration and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected OM&R Work in accordance with the Performance Monitoring Program, which shall be operated as though the relevant OM&R Work had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure or Quality Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the OM&R Work, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
 - (iv) this Section 41.2 shall not limit the Ministry's entitlement to reimbursement pursuant to Section 31.4;
 - (v) the Ministry shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 41.1(a)(ii), 41.1(a)(iii), 41.1(a)(vi), 41.1(a)(viii), 41.1(a)(ix), 41.1(a)(x), 41.1(a)(xi), 41.1(a)(xii) or 41.1(a)(xiii), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 19 - Variation Procedure; and
 - (vi) the Monthly Service Payments payable by the Ministry shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the OM&R Work as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 19 - Variation Procedure.

41.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:

- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 41.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 41.

41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount which Project Co or any Project Co Party recovers above the maximum insured amount required under this Project Agreement which is applicable to any such insurance policy.

42. RELIEF EVENTS

42.1 Definition

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm (including, during the Operational Term, Severe Winter Weather), severe and unseasonable winter weather conditions occurring prior to the Substantial Completion Date, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, Railway Company, Local Authority or other like body to perform works or provide services which are not Third Party Works;
 - (iii) accidental loss or damage to the Works and/or the Bypass or any roads servicing the Lands;
 - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
 - (v) blockade or embargo;

- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction or road maintenance industry (or a significant sector of that industry) in the Province of Saskatchewan;
- (vii) any civil disobedience or protest action, including any action taken by any Protester protesting or demonstrating against the carrying out of any part of the Project Operations or against the construction and/or operation of roads in general, provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.6;
- (viii) a claim by first nation or Métis communities against the Province asserting a breach of the duty to consult or a claim that the Province has infringed an aboriginal or treaty right, including a claim of aboriginal title; or
- (ix) a failure by a Utility Company to obtain approval of the National Energy Board or other like regulatory body required in connection with the construction, installation or relocation of Utility Infrastructure on or before the date contemplated in the relevant Utility Agreement.

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party or (ii) in the case of the Ministry claiming relief, as a result of any act or omission of any Province Person.

42.2 Consequences of a Relief Event

- (a) Subject to Section 42.3:
 - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 46.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, the Ministry shall be entitled to make Deductions in accordance with Schedule 18 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 42.2(a)(ii). Any Deduction to Project Co as a result of Relief Events referred to in Section 42.1(a)(v), 42.1(a)(vi), 42.1(a)(vii) or 42.1(a)(viii) shall not exceed, in the aggregate, such amount as would reduce payments to Project Co to an amount below the Senior Debt Service Amount.

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 39.1(a)(xii):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 39;

- (ii) where such Delay Event causes a delay in achieving Phase One Substantial Completion by the Scheduled Phase One Substantial Completion Date and such Delay Event is referred to in Section 42.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 42.1(a)(v), 42.1(a)(vi), 42.1(a)(vii) or 42.1(a)(viii), on the earlier of (A) the Phase One Substantial Completion Date and (B) the date of payment of the Ministry Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 20 - Compensation on Termination, the Ministry shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of the delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Service Amount, which, but for the Delay Event, would have been paid by the Ministry to Project Co; and
 - (iii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date and such Delay Event is referred to in Section 42.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 42.1(a)(v), 42.1(a)(vi), 42.1(a)(vii) or 42.1(a)(viii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Ministry Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 20 - Compensation on Termination, the Ministry shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of the delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Service Amount, which, but for the Delay Event, would have been paid by the Ministry to Project Co.
- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 42.2(b)(ii), 42.2(b)(iii) and 48.
 - (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 18 - Payment Mechanism will continue to be in full force and effect, subject to Section 42.2(a).
 - (e) Subject to Section 48, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 42.

42.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 42.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 42.

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- (c) Subject to Section 39.2(a) in respect of a Relief Event that is also a Delay Event, the Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
 - (d) Subject to Section 39.2(a) in respect of a Relief Event that is also a Delay Event, a subsequent written notice shall be given by the Party claiming relief to the other Party within a further 10 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 42.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
 - (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
 - (f) If, following the issue of any notice referred to in Section 42.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

42.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount above the maximum insured amount required under this Project Agreement which is applicable to any such insurance policy.

43. FORCE MAJEURE

43.1 Definition

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the Bypass and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the Bypass and/or the Lands from any event referred to in Section 43.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or

- (v) the discovery of any Species at Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

43.2 Consequences of Force Majeure

- (a) Subject to Section 43.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 39.1(a)(xi):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 39;
 - (ii) where such Delay Event causes a delay in achieving Phase One Substantial Completion by the Scheduled Phase One Substantial Completion Date and the Project Agreement is terminated pursuant to Section 46.2 of this Project Agreement, on the date of payment of the Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 20 - Compensation on Termination, the Ministry shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Service Amount, which, but for the Delay Event would have been paid by the Ministry to Project Co; and
 - (iii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date and the Project Agreement is terminated pursuant to Section 46.2 of this Project Agreement, on the date of payment of the Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 20 - Compensation on Termination, the Ministry shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by the Ministry to Project Co.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 43.2(b)(ii), 43.2(b)(iii) and 48.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 18 - Payment Mechanism will be suspended, and the Ministry shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the OM&R Work performed, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 43.2(d) shall never be more than the Maximum Service Payment.

- (e) Subject to Section 48, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 43.

43.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 43.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 43.
- (c) Subject to Section 39.2(a) in respect of an event of Force Majeure that is also a Delay Event, the Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) Subject to Section 39.2(a) in respect of an event of Force Majeure that is also a Delay Event, a subsequent written notice shall be given by the Party claiming relief to the other Party within a further 8 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 43.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 43.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

43.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 43 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

43.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force

Majeure. Schedule 22 - Dispute Resolution Procedure shall not apply to a failure of the Ministry and Project Co to reach agreement pursuant to this Section 43.5.

44. PROJECT CO DEFAULT

44.1 Project Co Events of Default

- (a) Subject to Section 44.1(b), for the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by the Ministry of its payment obligations hereunder:
 - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, 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 Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, the Ministry, a MHI Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the Governmental Activities or the availability of the Bypass to Bypass Users (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and 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 it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 44.1(a)(i)(A);
 - (B) Project Co ceases 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 will have a material adverse effect on Project Co’s ability to perform its obligations under this Project Agreement;
 - (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co’s ability to perform its obligations hereunder; or

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- (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 44.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 44.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the “**Longstop Date**”);
- (iii) Project Co either:
- (A) failing to deliver a rectification plan under Section 22.3(a)(iii)(B);
 - (B) delivering a rectification plan under Section 22.3(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a rectification plan under Section 22.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 22.3(a)(iii)(B)(III);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, the Governmental Activities or the availability of the Bypass to Bypass Users, or that may compromise (1) the Ministry’s reputation or integrity or the nature of the Province of Saskatchewan’s highway system, or (2) the ability of the Ministry to conduct its business, so as to negatively affect public perception of that system or undertaking, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from the Ministry;
- (v) Project Co committing a breach of Sections 51 or 52 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 44.1(a)(i) to (iv) inclusive or 44.1(a)(vi) to (xx) inclusive) which has or will have a material adverse effect on the Governmental Activities or the availability of the Bypass to Bypass Users, other than where such breach is a consequence of a breach by the Ministry of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
- (A) Project Co shall:
 - (I) promptly commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on the Ministry and the Governmental Activities or the availability of the Bypass to Bypass Users;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from the Ministry, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which

- latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 44.1(a)(v)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on the Ministry and the Governmental Activities or the availability of the Bypass to Bypass Users;
- (II) Project Co shall, within 3 Business Days after notice from the Ministry, submit a plan and schedule, which the Ministry shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to the Ministry, in its discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 44.1(a)(v)(B), or the Ministry, in its discretion, not accepting the plan and schedule submitted by Project Co, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by the Ministry of its obligations under this Project Agreement;
- (vii) Project Co ceasing to perform any OM&R Work in accordance with this Project Agreement which is necessary for the Governmental Activities or the availability of the Bypass to Bypass Users, other than as a consequence of a breach by the Ministry of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 58.1, 58.3 or 58.4(b);
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 58.4;
- (x) Project Co being awarded a total of or more Failure Points in any rolling 3 Payment Periods;
- (xi) Project Co being awarded a total of or more Failure Points in any rolling 6 Payment Periods;
- (xii) Project Co being awarded a total of or more Failure Points in any rolling 12 Payment Periods;

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- (xiii) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through the Ministry) within 45 days of the earlier of:
- (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiv) Project Co failing to pay any sum or sums due to the Ministry under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 22 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from the Ministry;
- (xv) Project Co failing to comply with Section 59;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 26 - Refinancing;
- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by the Ministry of its obligations under this Project Agreement, and:
- (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 22 - Dispute Resolution Procedure;
- (xix) Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by the Ministry of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under *The Saskatchewan Employment Act* S.S. 2013 Chapter 5-15.1 against Project Co or any Project Co Party or the Ministry (an “**H&S Conviction**”) provided however that:
- (A) an H&S Conviction against Project Co, a Project Co Party or the Ministry shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 58.3 or

Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to the Ministry, in its discretion; and

(B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 44.1(a)(xix), the Ministry shall:

(I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and

(II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or

(xx) Project Co failing to comply with Section 27.4.

(b) The Ministry shall not exercise any rights under this Section 44 (except its rights under Section 44.5(a)(i)) as a result of a Project Co Event of Default referred to in Sections 44.1(a)(vii), 44.1(a)(x), 44.1(a)(xi) and 44.1(a)(xii) until the day following the Substantial Completion Payment Commencement Date. For greater certainty, if the Ministry is prevented from exercising any rights under this Section 44 by the terms of the immediately preceding sentence, then, notwithstanding the passage of time or any intervening event (including that the Ministry may have exercised its rights under Section 44.5(a)), on and after the day following the Substantial Completion Payment Commencement Date, the Ministry may exercise any such rights.

44.2 Notification of Occurrence

(a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify the Ministry of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

44.3 Right to Termination

(a) On the occurrence of a Project Co Event of Default, or at any time after the Ministry becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 22 - Dispute Resolution Procedure that a Project Co Event of Default has occurred), the Ministry may, subject to Section 44.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

44.4 Remedy Provisions

(a) In the case of a Project Co Event of Default referred to in Sections 44.1(a)(i)(B), 44.1(a)(i)(C), 44.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 44.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 44.1(a)(i)(B) or 44.1(a)(i)(C)), 44.1(a)(iii), 44.1(a)(iv), 44.1(a)(vi), 44.1(a)(vii), 44.1(a)(viii), 44.1(a)(ix) (where the Project Co Event of Default referred to in Section 44.1(a)(ix) is capable of being remedied), 44.1(a)(xiv), 44.1(a)(xvi), 44.1(a)(xvii) (where the Project Co Event of Default referred to in Section

44.1(a)(xvii) is not in respect of insurance), 44.1(a)(xviii), 44.1(a)(xix) or 44.1(a)(xx), the Ministry shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:

- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to the Ministry, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 44.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, the Ministry shall have 5 Business Days from receipt of the same within which to notify Project Co that the Ministry does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which the Ministry shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 44.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on the Ministry and the Governmental Activities or the availability of the Bypass to Bypass Users; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 44.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 44.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 44.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then the Ministry may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (d) Notwithstanding that the Ministry may give the notice referred to in Section 44.4(a), and without prejudice to the other rights of the Ministry in this Section 44.4, at any time during which a Project Co Event of Default is continuing, the Ministry may, at Project Co's risk and expense, take such steps as the Ministry considers appropriate, either itself or by engaging others

(including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 44.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and the Ministry shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

44.5 Replacement of Non-Performing O&M Provider

- (a) The Ministry may, acting reasonably, require Project Co to terminate the O&M Contract and ensure that a replacement O&M Provider is appointed in accordance with Section 58.3 to provide the O&M Operations within 60 days:
- (i) if the Ministry could have exercised a right to terminate this Project Agreement but for the provisions of Section 44.1(b), and the Project Co Event of Default was caused, or contributed to, by the O&M Provider or otherwise relates to the OM&R Work; or
 - (ii) as an alternative to termination of this Project Agreement pursuant to Sections 44.3 or 44.4, in any circumstance in which the Ministry could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the O&M Provider or otherwise relates to the OM&R Work; or
 - (iii) if Project Co accrues, in any rolling 6 Payment Periods, more than Failure Points in respect of Quality Failures,

provided that this Section 44.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If the Ministry exercises its rights under this Section 44.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or performance of the OM&R Work until such time as a replacement O&M Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate performance of the OM&R Work and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or performance of the OM&R Work, then, without prejudice to the other rights of the Ministry in this Section 44.5, the Ministry itself may perform, or engage others (including a third party) to perform, the OM&R Work and Section 31.4 shall apply, *mutatis mutandis*, to the OM&R Work. Any Dispute in respect of the interim management or provision of the OM&R Work may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the OM&R Contract and to secure a replacement O&M Provider in accordance with this Section 44.5, the Ministry shall be entitled to exercise its termination rights in accordance with Sections 44.3 and 44.4, as applicable.
- (d) Where a replacement O&M Provider is appointed in accordance with this Section 44.5, of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

44.6 The Ministry's Costs

- (a) Project Co shall reimburse the Ministry for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by the Ministry in exercising its rights under this Section 44, including any relevant increased administrative expenses. The Ministry shall take commercially reasonable steps to mitigate such costs.

44.7 No other Rights to Terminate

- (a) The Ministry shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 44 and 46.

45. MINISTRY DEFAULT**45.1 Ministry Events of Default**

- (a) For the purposes of this Project Agreement, “**Ministry Event of Default**” means any one or more of the following events or circumstances:
- (i) the Ministry failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by the Ministry in accordance with Schedule 22 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) (index linked), and:
 - (A) in respect of the Phase One Milestone Payment or the Substantial Completion Payment, such failure continues for 10 Business Days;
 - (B) subject to Section 45.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
 - (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
 - (D) in respect of any other payment due and payable by the Ministry to Project Co under this Project Agreement, such failure continues for 90 days,in any such case, from receipt by the Ministry of a notice of non-payment from or on behalf of Project Co;
 - (ii) the Ministry committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
 - (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than

as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences and Approvals shall not constitute an “act of any Governmental Authority”).

45.2 Project Co’s Options

- (a) On the occurrence of a Ministry Event of Default and while the same is continuing, Project Co may give notice to the Ministry of the occurrence of such Ministry Event of Default, which notice will specify the details thereof, and, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, may:
 - (i) suspend performance of the Works and the OM&R Work until such time as the Ministry has remedied such Ministry Event of Default; and/or
 - (ii) if such Ministry Event of Default has not been remedied within 30 days of receipt by the Ministry of notice of the occurrence of such Ministry Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

45.3 Project Co’s Costs

- (a) The Ministry shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 45, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

45.4 No Other Rights to Terminate

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

46. RELIEF EVENT AND NON-DEFAULT TERMINATION

46.1 Termination for Relief Event

- (a) Subject to Section 46.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 42.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 46.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount (but excluding any amount above the

maximum insured amount required under this Project Agreement) which, together with the Monthly Service Payment, is equal to or greater than 85% of the Maximum Service Payment for the relevant Payment Period.

46.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 43.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

46.3 Termination for Convenience

- (a) The Ministry shall, in its discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co.
- (b) In the event of notice being given by the Ministry in accordance with this Section 46.3, the Ministry shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the OM&R Work, or any element of the OM&R Work, where such Works or OM&R Work have not yet been commenced.

46.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

47. EFFECT OF TERMINATION**47.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 46.4, this Section 47 shall apply in respect of such termination.

47.2 Continued Effect - No Waiver

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

47.3 Continuing Performance

- (a) Subject to any exercise by the Ministry of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 20 - Compensation on Termination) notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 47.

47.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 46.4:
- (i) if termination is prior to the Substantial Completion Date, insofar as any transfer shall be necessary to fully and effectively transfer such property to the Ministry as shall not already have been transferred to the Ministry pursuant to Section 54.1, Project Co shall transfer to, and there shall vest in, the Ministry, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the Ministry), such part of the Works and Bypass as shall have been constructed and such items of the Plant and equipment as shall have been procured by Project Co, and, if the Ministry so elects:
- (A) all plant, equipment and materials (other than those referred to in Section 47.4(a)(i)(B)) on or near to the Site shall remain available to the Ministry for the purposes of completing the Works; and
- (B) all construction plant and equipment shall remain available to the Ministry for the purposes of completing the Works, subject to payment by the Ministry of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to the Ministry (to the extent such items have not already been delivered to the Ministry) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Bypass;
- (iii) insofar as title shall not have already passed to the Ministry pursuant to Section 54.1 or Section 47.4(a)(i), Project Co shall hand over to, and there shall vest in, the Ministry, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the Ministry), the Bypass together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory as set forth in Section 500.8.2 (Inventory and Verification of Inventory) of Schedule 15-3 – Technical Requirements - OM&R and Handback and to the extent that any such assets or rights are not capable of being transferred by Project Co to the Ministry, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by the Ministry in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

- (iv) if the Ministry so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract, the O&M Contract and the CPPRW Contract), and any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to the Ministry or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor, the O&M Provider or the CPPRW Contractor shall be made to the Ministry pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if the Ministry so elects, execute such sale) to the Ministry at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 22 - Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the Ministry), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Bypass, and reasonably required by the Ministry in connection with the operation of the Bypass or the performance of the OM&R Work;
- (vi) Project Co shall deliver to the Ministry (to the extent such items have not already been delivered to the Ministry) one complete set of:
 - (A) the most recent As Built Drawings in the format that the Ministry, acting reasonably, considers most appropriate at the time showing all alterations made since the Phase One Substantial Completion Date or Substantial Completion Date, as applicable; and
 - (B) the most recent maintenance, operation and training manuals for the Bypass;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the Ministry, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the Ministry), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Bypass;
- (viii) Project Co shall deliver to the Ministry all information, reports, documents, records and the like referred to in Section 35, including as referred to in Schedule 13 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to the Ministry); and
- (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 46.4, the Bypass and elements of the Bypass shall be in the condition required in accordance with Section 49 and Schedule 21 - Handback Procedure.

47.5 Ownership of Information

- (a) Subject to Section 50, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of the Ministry and upon termination of this Project Agreement shall be provided or returned to the Ministry, as applicable, in electronic format acceptable to the Ministry, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

47.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that the Ministry shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 47.

47.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued performance of OM&R Work pursuant to Sections 3.2 and 3.3 of Schedule 20 - Compensation on Termination if applicable:
- (i) cooperate fully with the Ministry and any successors providing services in the nature of any of the OM&R Work or any part of the OM&R Work in order to achieve a smooth transfer of the manner in which the OM&R Work is performed and to avoid or mitigate, insofar as reasonably practicable, any inconvenience or any risk to the health and safety of any Bypass Users;
 - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by the Ministry pursuant to Section 47.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from the Ministry requiring it to do so, the Ministry may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (iii) forthwith deliver to the Ministry Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Bypass; and
 - (B) to the extent transferable and without prejudice to the Ministry's rights pursuant to Section 50, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Bypass; and

- (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 21 - Expiry Transition Procedure, shall leave the Site and the Bypass in a safe, clean and orderly condition.
- (b) If the Ministry wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the OM&R Work or any part of the OM&R Work, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with the Ministry fully in such competition process, including by:
 - (i) providing any information which the Ministry may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to the Ministry, other than Sensitive Information; and
 - (ii) assisting the Ministry by allowing any or all participants in such competition process unrestricted access to the Site and the Bypass.

47.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 47, this Project Agreement shall terminate and, except as provided in Section 47.9, all rights and obligations of the Ministry and Project Co under this Project Agreement shall cease and be of no further force and effect.

47.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16, 16.2(a), 16.3(a), 16.4(a), 24.6, 25.8, 30.4, 31, 32.6, 32.8, 32.12, 32.13, 32.14, 33, 34, 35, 38, 44.6, 45.3, 46.4, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 59.3, 60.1, 63.4, 63.8, 63.9, 63.10, 63.11 and 63.12 of this Project Agreement, Schedule 20 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 21 - Handback Procedure, Sections 1.2 to 1.8 of Schedule 13 - Record Provisions, Schedule 22 - Dispute Resolution Procedure, and any other provisions of this Project Agreement which are expressed to survive termination and 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 shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 46.4.

48. COMPENSATION ON TERMINATION**48.1 Compensation on Termination**

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 20 - Compensation on Termination shall apply and the Ministry shall pay Project Co any applicable compensation on termination.

48.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 48.2(b), any compensation paid pursuant to this Section 48, including pursuant to Schedule 20 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and the Ministry, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and the Ministry shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 48.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 32.12 or taken into account pursuant to Schedule 20 - Compensation on Termination in determining or agreeing upon the Ministry Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 47.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
 - (iii) any amount owing to the Ministry in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute; and
 - (C) any fraud or other criminal offence committed against the Ministry.

49. HANDBACK PROCEDURE**49.1 Handback**

- (a) Project Co and the Ministry shall each comply with the Handback Requirements of Schedule 21 - Handback Procedure.

50. INTELLECTUAL PROPERTY**50.1 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to the Ministry and agrees that:
- (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to the Ministry herein;
 - (ii) Project Co has and shall have the right to execute, and shall ensure that the Project Co Parties have the right to execute, all assignments of Intellectual Property, Project Data and Jointly Developed Materials contemplated under this Section 51; and
 - (iii) the Project Data and the Intellectual Property Rights do not and shall not infringe, and are not and shall not be misappropriation of, any third party Intellectual Property Rights, and, as of Commercial Close, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

50.2 Delivery of Project Data and Intellectual Property Rights

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, the Ministry free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to the Ministry on the aforesaid terms of this Section 50.2(a), for any and all of the Approved Purposes.

50.3 Licence of Project Data and Intellectual Property Rights

- (a) Project Co:
- (i) hereby grants to the Ministry an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
 - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor, the O&M Provider or the CPPRW Contractor, obtain the grant of an equivalent licence to that referred to in Section 50.3(a)(i), provided that such licence may, in respect of the Construction Contractor's, the O&M Provider's and the CPPRW Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
 - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor, the O&M Provider or the CPPRW Contractor), obtain the grant of an equivalent licence to that referred to in Section 50.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.

- (b) In this Section 50.3 and Section 50.5(a), “use” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

50.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and the Ministry pursuant to this Project Agreement or in relation to the Bypass, the Site or Project Operations (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that the Ministry shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of the Ministry, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) The Ministry hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to the Ministry.

50.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 50 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of the Ministry, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Ministry or its nominee to access and otherwise use (as such term is defined in Section 50.3(b), subject to the payment by the Ministry of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 50.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 50 in accordance with Good Industry Practice. Project Co shall submit to the Ministry Representative Project Co’s proposals for the back up and storage in safe custody of such data, materials and documents and the Ministry shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Ministry Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the Ministry Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 50.5(b) may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure with reference to Good Industry Practice.

50.6 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against the Ministry or any Province Person which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by the Ministry or any Province Person or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by the Ministry or any Province Person otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless the Ministry and such Province Person from and against all such demands, claims, actions and proceedings and Section 55.3 shall apply.

50.7 Ministry Trade-Marks

- (a) Project Co shall not:
- (i) use any Ministry Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to the Ministry and Project Co, each acting reasonably; or
 - (ii) use the names or any identifying logos or otherwise of the Ministry or the Ministry Representative in any advertising or permit them so to be used except with the prior written consent of the Ministry.

50.8 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 50 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

50.9 Government Use of Documents

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with the Ministry's ability to use this Project Agreement in any manner desired by the Ministry.
- (b) Project Co hereby consents to the use by the Ministry of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by the Ministry (in consultation with Project Co) of any information supplied in confidence to the Ministry by Project Co in circumstances where disclosure may be refused under section 19(1) of FIPPA.

50.10 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project Co nor any Project Co Party shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the Ministry or the Confidential Information of the Ministry, including, without limitation, the Technical Requirements unless such use is otherwise permitted pursuant to this

Project Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.

- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including, without limitation, use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the Ministry or the Confidential Information of the Ministry, including, without limitation, the Technical Requirements, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the Ministry or the Confidential Information of the Ministry, including, without limitation, the Technical Requirements.

51. CONFIDENTIALITY/COMMUNICATIONS

51.1 Disclosure

- (a) Subject to Sections 51.1(b), 51.1(c) and 51.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that the Ministry has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as the Ministry, in its discretion, may consider appropriate. In exercising its discretion, the Ministry will be guided by the principles set out in Sections 51.1(b) and 51.1(c).
- (b) The Ministry will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 19(1) of FIPPA.
- (c) Notwithstanding Section 51.1(b), but subject to Section 51.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), the Ministry may disclose such information.

51.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), the Ministry shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 51.1(b). The Parties acknowledge and agree that the Service Payment, but not the breakdown thereof, may be disclosed.

- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 51.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 22 - Dispute Resolution Procedure, and the Ministry shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

51.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that subject to compliance with FIPPA, the Ministry will be free to use, disclose or publish (including on websites) any information, including Confidential Information, on such terms and in such manner as the Ministry sees fit.
- (b) For greater certainty, Project Co acknowledges and agrees that, subject only to the removal of any information which Project Co is (or would be) entitled to refuse to disclose pursuant to section 19(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by the Ministry.

51.4 Freedom of Information and Protection of Privacy Act (Saskatchewan)

- (a) The Parties acknowledge and agree that FIPPA applies to the Ministry, and that the Ministry is required to fully comply with FIPPA.
- (b) The Ministry shall, within the time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co (or any Project Co Party) or of the Ministry's intention to voluntarily release any information or documents which contain Confidential Information that relates to Project Co (or any Project Co Party).

51.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 51 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
- (i) disclose in confidence to the Lenders and prospective Lenders and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and

- (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that the Ministry may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Ministry's alternate procurement and financing policies and framework. The Ministry will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care.
- (f) Without limiting the generality of Section 51.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 20.11 and approved by the Ministry, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by the Ministry.

51.6 Exceptions

- (a) Information of a Party (the "**Proprietor**"), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
 - (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of Commercial Close, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;

- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to the Ministry upon a termination of this Project Agreement, pursuant to Section 47 or is otherwise required by the Ministry for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Bypass, the operation, maintenance or improvement of the Bypass, or any other operations or services the same as, or similar to, the Project Operations; or
- (ix) the information would not be exempt from disclosure under FIPPA.

51.7 Survival of Confidentiality

- (a) The obligations in Section 51.1 to Section 51.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

51.8 Communications Protocol

- (a) The Parties shall comply with the provisions of Schedule 12 - Communications Protocol.

52. PERSONAL INFORMATION

52.1 General

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of the Ministry and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by the Ministry.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Technical Requirements and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 52.

- (e) Project Co shall allow the Ministry on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 52 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of the Ministry with respect to Project Co or each Project Co Party's handling of Personal Information.
- (f) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of the Ministry and without obtaining written contractual commitments of such third party substantially the same as those of this Section 52.

52.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees that require access to such Personal Information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 52.
- (c) Upon termination of this Project Agreement or upon request of the Ministry, whichever comes first, Project Co shall immediately cease all use of and return to the Ministry or, at the direction of the Ministry, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to (c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform the Ministry of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 52.
- (f) The Ministry may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to the Ministry, acting reasonably, requiring such person to keep Personal Information confidential.

52.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to the Ministry and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 52 and any other provision of the Project Agreement, this Section 52 shall prevail.
- (c) The obligations in this Section 52 shall survive the termination of this Project Agreement.

53. INSURANCE**53.1 General Requirements**

- (a) Project Co and the Ministry shall comply with the provisions of Schedule 24 - Insurance Requirements.

53.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or the Ministry of their respective liabilities and obligations under this Project Agreement.

54. TITLE**54.1 Title**

- (a) With the exception of any Maintenance Facilities and Additional Lands, title to each item and part of the Bypass, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to the Ministry (or as the Ministry may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Bypass or are to be affixed or attached prior to Substantial Completion shall pass to the Ministry (or as the Ministry may direct) at the time that such items are included in the Bypass or affixed or attached to the Bypass.
- (b) The Ministry shall have the option pursuant to Section 9.8 to acquire title to the Additional Lands.

55. INDEMNITIES**55.1 Project Co Indemnities to the Ministry**

- (a) Project Co shall indemnify and save harmless the Ministry and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any

and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (ii) any physical loss of or damage to all or any part of the Site and the Bypass, or to any equipment, assets or other property related thereto;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party (including Utility Infrastructure or Railway Infrastructure); or
- (v) any other loss or damage of any third party,

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (vi) the breach of this Project Agreement by the Ministry; or
 - (vii) in respect of Section 55.1(a)(i), deliberate or negligent act or omission of the Ministry or any Province Person; or
 - (viii) in respect of Sections 55.1(a)(ii), 55.1(a)(iii), 55.1(a)(iv) or 55.1(a)(v), any act or omission of the Ministry or any Province Person; or
 - (ix) a deliberate or negligent act or omission of an Bypass User that results in undue interference with Project Co's performance of the OM&R Work and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of the Ministry or an appropriate Province Person, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (B) the Bypass User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless the Ministry and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless the Ministry and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:

- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences and Approvals in accordance with this Project Agreement;
- (ii) any Contamination on, in or under, or migrating to or from, the Lands (or any lands formerly comprised in the Lands to the extent such Contamination was on, in or under, or migrated to or from, such lands while they were comprised in the Lands), except for Contamination for which the Ministry is responsible pursuant to Section 16.2(a); or
- (iii) subject to Section 9.6(d), the provision of assistance by the Ministry to Project Co pursuant to Section 9.6(c),

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by the Ministry or by any act or omission of the Ministry or any MHI Party.

- (d) Without prejudice to the Ministry's rights under Section 44 and any other rights under this Project Agreement, if the Ministry exercises its step-in rights under the Construction Contractor's Direct Agreement, the O&M Provider's Direct Agreement or the CPPRW Contractor's Direct Agreement, Project Co shall indemnify the Ministry for all obligations of Project Co assumed by the Ministry under the Construction Contract, the O&M Contract or the CPPRW Contract, as the case may be, and for all reasonable costs and expenses incurred by the Ministry in relation to the exercise of the Ministry's rights.
- (e) Project Co shall indemnify the Ministry for damages suffered or incurred on account of: (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to the Ministry under Schedule 22 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by the Ministry, or from the date identified (if any) applicable to an amount determined as payable by Project Co to the Ministry under Schedule 22 - Dispute Resolution Procedure, up to and including the date of payment.

55.2 Ministry Indemnities to Project Co

- (a) The Ministry shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of 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, or involving or relating to, the performance or breach of this Project Agreement by the Ministry or any act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or

involving or relating to, breach of this Project Agreement by the Ministry or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and

- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the Ministry or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by the Ministry any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available (up to the maximum insured amount required under this Project Agreement) or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) The Ministry shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by the Ministry herein.
- (c) The Ministry shall indemnify Project Co for damages suffered or incurred on account of: (i) any payment not duly made by the Ministry pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by the Ministry; or (iii) an amount determined as payable by the Ministry to Project Co under Schedule 22 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by the Ministry to Project Co under Schedule 22 - Dispute Resolution Procedure, up to and including the date of payment.

55.3 Conduct of Claims

- (a) This Section 55.3 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 55, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 55.3(d), 55.3(e) and 55.3(f), on the giving of such notice by the Beneficiary, 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 shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction 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 shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.

- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall 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 shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 55.3 relates.
- (e) The Beneficiary shall 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 Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 55.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 55.3(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 55.3(d).
- (f) The Beneficiary shall 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 55.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where the Ministry is the Beneficiary, the Ministry may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and

assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 55.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.

- (g) 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 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 shall 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 shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 55.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

55.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Section 63.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

56. LIMITS ON LIABILITY

56.1 Indirect Losses

- (a) Subject to Section 56.1(b), without prejudice to the Ministry’s rights under the Payment Mechanism, or the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, “**Indirect Losses**”).

- (b) With respect to the indemnity in Section 55.1(a)(i), the exceptions in Sections 56.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, the Ministry’s loss of use of the Bypass or a portion thereof, which for the purposes of Section 55.1(a)(i), shall be Direct Losses.

56.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, neither the Ministry nor any Province Persons shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to the Ministry or any Province Person in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

56.3 Sole Remedy

- (a) Subject to:
- (i) any other rights of the Ministry expressly provided for in this Project Agreement; and
 - (ii) the Ministry’s right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by the Ministry pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by the Ministry pursuant to Section 48,

the sole remedy of the Ministry in respect of a failure to perform the OM&R Work in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 56.3(a) shall prevent or restrict the right of the Ministry to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 24 - Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

56.4 Maximum Liability

- (a) Subject to Section 56.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 55 shall not exceed . This limit shall be index linked and shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 24 - Insurance Requirements (up to but not including amounts in excess of the maximum insured amount required under this Project Agreement). This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (b) Project Co's maximum aggregate liability in respect of all claims under Section 55.1(a)(i) shall not exceed . This limit shall be index linked and shall be exclusive of any proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 24 - Insurance Requirements (up to but not including amounts in excess of the maximum insured amount required under this Project Agreement). This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 56.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

57. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 22 - Dispute Resolution Procedure.

58. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

58.1 Project Co Assignment

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the O&M Contract, the CPPRW Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of the Ministry, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the Ministry's role (in the Ministry's reasonable opinion) in the Province of Saskatchewan; (ii) may compromise the reputation or integrity of the Ministry and/or any MHI Party; or (iii) are inconsistent with the nature of the Province of Saskatchewan's highway system, so as to affect public perception of that system.
- (b) Section 58.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if the Ministry so requires.

58.2 Ministry Assignment

- (a) The Ministry may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and the Ministry are parties:
 - (i) as may be required to comply with Applicable Law;
 - (ii) to any ministry of the Government of Saskatchewan;
 - (iii) to a ministry or an agency of the Government of Saskatchewan having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the Ministry under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of the Ministry's obligations hereunder and under the other Project Documents to which the Ministry is a party in respect of the period from and after the assignment; and

- (iv) in circumstances other than those described in Sections 58.2(a)(i) to 58.2(a)(iii), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of the Ministry hereunder and under any agreement in connection with this Project Agreement to which Project Co and the Ministry are parties in respect of the period from and after the assignment.
- (b) The Ministry shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 58.2.

58.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract the O&M Contract or the CPPRW Contract, and shall not permit the Construction Contractor, the O&M Provider or the CPPRW Contractor to subcontract any interest in the Construction Contract, the O&M Contract or the CPPRW Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with the Ministry's role (in the Ministry's reasonable opinion) in the Province of Saskatchewan; (ii) may compromise the reputation or integrity of the Ministry and/or any MHI Party; or (iii) are inconsistent with the nature of the Province of Saskatchewan's highway system, so as to affect public perception of that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor, the O&M Provider or the CPPRW Contractor unless Project Co has complied with Sections 7.2(a), 58.3(c) and 58.3(d) or received the prior written consent of the Ministry.
- (c) Subject to Section 58.3(d), if either the Construction Contract, the O&M Contract or the CPPRW Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor, the O&M Provider or the CPPRW Contractor, as the case may be, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to the Ministry's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, the O&M Provider or the CPPRW Contractor that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by the Ministry, acting reasonably.

58.4 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the Ministry's role (in the Ministry's reasonable opinion) in the Province of Saskatchewan; (ii) may compromise the reputation or integrity of the Ministry and/or, any the MHI Party; or (iii) are inconsistent with the

nature of the Province of Saskatchewan's highway system, so as to affect public perception of that system; or

- (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Governmental Activities or the availability of the Bypass to Bypass Users.
- (b) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, the Ministry may require a Change in Ownership so that such Restricted Person shall be divested of its Direct or Indirect Power or Control, on such terms as are satisfactory to the Ministry, in each case in its discretion.
- (c) Prior to the third anniversary following the Substantial Completion Date, the Ministry shall be entitled to receive a per cent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (d) Subject to Sections 58.4(a) and (b), no Change in Control of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, shall be permitted without the prior written consent of the Ministry, not to be unreasonably withheld or delayed.
- (e) This Section 58.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (f) Whether or not Project Co is required to obtain the Ministry's consent pursuant to this Section 58.4, Project Co shall provide notice to the Ministry of any proposed Change in Ownership or Change in Control of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, as the case may be, within 5 Business Days after such Change in Ownership or Change in Control, and such notification shall include a statement identifying such owners, or persons with an ownership interest in Project Co, as the case may be, and their respective holdings of such ownership interests of Project Co prior to and following any such Change in Ownership or Change in Control.
- (g) Upon request by Project Co and delivery of the particulars required by the Ministry, the Ministry shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the Ministry's role (in the Ministry's reasonable opinion) in the Province of Saskatchewan; (ii) may compromise the reputation or integrity of the Ministry and/or any MHI Party; or (iii) are inconsistent with the nature of the Province of Saskatchewan's highway system, so as to affect public perception of that system.

58.5 Ministry Due Diligence

- (a) Project Co shall promptly reimburse the Ministry for the Ministry's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of the Ministry pursuant to, or the Ministry's determination of Project Co's compliance with, Sections 58.1, 58.3 or 58.4, whether or not such consent is granted.

59. PROHIBITED ACTS

59.1 Definition

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

- (i) offering, giving or agreeing to give to the Ministry or any public body (or anyone employed by or acting on their behalf), 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 the obtaining or performance of this Project Agreement or any other agreement with the Ministry or any public body in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with the Ministry or any public body in connection with the Project;

provided that this Section 59.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to the Ministry or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the Ministry or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with the Ministry or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to the Ministry or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Ministry, provided that this Section 59.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to the Ministry or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the Ministry or any public body in connection with the Project without contravening the intent of this Section 59;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with the Ministry or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Ministry or any other public body.

59.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the Ministry shall be entitled to act in accordance with the following:

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- (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then the Ministry may give written notice to Project Co and Section 44 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then the Ministry may give written notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then the Ministry may give written notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 58.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then the Ministry may give notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 59.2(a)(i) to 59.2(a)(iv), then the Ministry may give notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.
- (b) Any notice of termination under this Section 59.2 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom the Ministry believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 59.2, the Ministry shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 59.

59.3 Permitted Payments

- (a) Nothing contained in this Section 59 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their

employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

59.4 Notification

- (a) Project Co shall notify the Ministry of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

59.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 59, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

60. NOTICES

60.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Project Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail or by hand or transmitted by electronic transmission to the address or electronic mail address as follows:

If to Project Co: SGTP Highway Bypass Limited Partnership
1903 E Turvey Road
Regina, SK S4N 3A4

E-mail:

Fax: [REDACTED]
Attn.: [REDACTED]

If to the Ministry: Ministry of Highways and Infrastructure
Victoria Tower
1200 – 1855 Victoria Avenue
Regina, Saskatchewan
S4P 3T2

E-mail: zvezdan.lazic@gov.sk.ca
Fax: 306-933-5188
Attn.: Zev Lazic - Executive Director,
Major Projects

With a copy to:

SaskBuilds Corporation
720-1855 Victoria Avenue
Regina, Saskatchewan
S4P 3T2

E-mail: Miguel.morrisette@gov.sk.ca
Fax: 306-798-0626
Attn.: Miguel Morrisette, Project
Director

60.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 60.1, where any Notice is to be provided or submitted to the Ministry Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail or by hand or transmitted by electronic transmission, as follows:

If to Project Co Representative:

SGTP Highway Bypass Limited
Partnership
1903 E Turvey Road
Regina, SK S4N 3A4

E-mail:

Fax:

Attn.:

If to the Ministry Representative:

Ministry of Highways and Infrastructure
Victoria Tower
1200 – 1855 Victoria Avenue
Regina, Saskatchewan
S4P 3T2

E-mail: zvjezdan.lazic@gov.sk.ca

Fax: 306-787-9777

Attn.: Zev Lazic - Executive Director,
Major Projects

With a copy to:

SaskBuilds Corporation
720-1855 Victoria Avenue
Regina, Saskatchewan
S4P 3T2

E-mail: Miguel.morrisette@gov.sk.ca

Fax: 306-798-0626

Attn.: Miguel Morrisette, Project
Director

60.3 Electronic Transmission

- (a) Where any Notice is provided or submitted to a Party via electronic transmission, an original of the Notice sent via electronic transmission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic transmission shall not be invalid by reason only of a Party's failure to comply with this Section 60.3.

60.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 60.1 or 60.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

60.5 Deemed Receipt of Notices

- (a) Subject to Sections 60.5(b) and 60.5(c):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic transmission shall be deemed to have been received on the day it is transmitted by electronic transmission.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic transmission in accordance with this Section 60.
- (c) If any Notice delivered by hand or transmitted by electronic transmission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

60.6 Service on the Ministry

- (a) Where any Notice is required to be served on the Ministry, the obligation to serve such Notice shall be fulfilled by serving it on the Ministry in accordance with the provisions of this Section 60.

61. EMERGENCY MATTERS**61.1 Emergency**

- (a) Upon the occurrence of an Emergency, Project Co shall comply with its Traffic Management Plan, including its Emergency Traffic Plan.

- (b) If, in respect of any Emergency, the Ministry notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by the Ministry or any other statutory body, then Project Co shall, subject to Schedule 19 - Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedure mentioned in Section (a)).

62. MINISTRY DESIGNATE

62.1 Right to Designate

- (a) At any time and from time to time, the Ministry may designate any ministry, branch, agency, division, department or office of the Government of Saskatchewan to carry out administrative responsibility for the rights and obligations of the Ministry under this Project Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to the Ministry for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of notices and documentation to the Ministry, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Ministry has notified Project Co in writing that such designated person is no longer the person designated by the Ministry hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice). The Ministry shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Ministry to delegate administrative responsibilities hereunder as set forth in this Section 62.1.

63. GENERAL

63.1 Amendments

- (a) This Project Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Project Agreement.

63.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

63.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between the Ministry and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between the Ministry and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
- (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
 - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
 - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
 - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

63.4 General Duty to Mitigate

- (a) The Ministry and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

63.5 Actual Knowledge

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and the Ministry shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of Project Co and in the case of the Ministry, its directors, officers and senior management, and the Ministry

Representative or the Project Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the “knowledge” of Project Co or of the Ministry shall be construed in a manner consistent with the foregoing sentence.

63.6 Entire Agreement

- (a) Except where provided otherwise in this Project Agreement, this Project Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Project Agreement.

63.7 No Reliance

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
 - (ii) this Section 63.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

63.8 Severability

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

63.9 Enurement

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both the Ministry and Project Co are parties shall enure to the benefit of, and be binding on, the Ministry and Project Co and their respective successors and permitted transferees and assigns.

63.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with

the laws of the Province of Saskatchewan and the laws of Canada applicable therein and shall be treated in all respects as a Saskatchewan contract, without regard to conflict of laws principles.

- (b) Subject to Schedule 22 - Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Saskatchewan and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under *The Proceedings Against the Crown Act* (Saskatchewan).

63.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

63.12 Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

63.13 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

63.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

63.15 Proof of Authority

- (a) The Ministry and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to the Ministry or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind the Ministry or Project Co, as applicable.

63.16 Counterparts

- (a) This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and

binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of this Project Agreement which was so faxed.

63.17 Province Persons as Third Party Beneficiaries

- (a) The provisions of Sections 6.1, 6.2(a), 6.3(a), 8.1(e), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(iv), 16.1(a), 20.3(h), 21.1, 33.10, 34.2(e), 50.6(a), 55.1, and 56.2(a) and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or a MHI Party, as applicable, are:
- (i) intended for the benefit of each Province Person, or the MHI Party, as applicable and, if so set out in the relevant Section, each Province Person's or the MHI Party's, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each Province Person, the "**Province Person Third Party Beneficiaries**", and in respect of each the MHI Party, the "**Ministry Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries and the Ministry Third Party Beneficiaries may have in contract or otherwise.
- (b) The Ministry shall hold the rights and benefits of Sections 6.1, 6.2(a), 6.3(a), 8.1(e), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(iv), 16.1(a), 20.3(h), 21.1, 33.10, 34.2(e), 50.6(a), 55.1, and 56.2(a) and each other provision of this Project Agreement which is to the benefit of a Province Person or a MHI Party, as applicable, in trust for and on behalf of the Province Person Third Party Beneficiaries or the Ministry Third Party Beneficiaries, as applicable, and the Ministry hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or the Ministry Third Party Beneficiaries, as applicable.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Project Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF SASKATCHEWAN, as represented by
the Minister of Highways and Infrastructure**

Per:

Name:
Title:

Per:

Name:
Title:

**SGTP HIGHWAY BYPASS LIMITED
PARTNERSHIP, by its general partner, SGTP
Highway Bypass GP Inc.**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

23502396.1