

ELECTRICAL MAINTENANCE SERVICE AGREEMENT

@@ ELECTRICAL SERVICE AREA

THIS AGREEMENT dated for reference the @@Date.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Transportation and Infrastructure (the "Province")

AND:

@@ Name, having an office at
@@Address (the "Contractor")

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BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Transportation and Infrastructure (the "Province")

AND:

@@ Name, having an office at (the "Contractor")

WHEREAS:

- A. The Province has agreed to appoint and retain the Contractor to provide certain electrical maintenance services; and
- B. The Contractor has agreed to provide such services for the Province on the terms of this Agreement.

NOW THEREFOR in consideration of the premises and the covenants, agreements, representations, warranties and payments hereinafter contained the parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

- (a) **"Additional Services"** has the meaning in Schedule 8 ("Additional Services");
- (b) **"Adjusted Annual Price"** means the annual sum payable by the Province to the Contractor, exclusive of GST and inclusive of all other applicable taxes, duties and other charges, in consideration for the provision of Routine Maintenance Services during a Contract Year subsequent to the First Contract Year, as may be amended from time to time in accordance with this Agreement including but not limited to changes to Services, changes to Inventory or through the Annual Adjustment Process;
- (c) **"Agreement"** or **"Electrical Maintenance Service Agreement"** means this agreement;
- (d) **"Anniversary Date"** means @@, 20@@, and each anniversary thereafter;
- (e) **"Annual Adjustment Process"** means the annual adjustment process described in Schedule 7 ("Annual Adjustment Process");

- (f) **"Annual Price"** means the price for the First Contract Year, the Base Annual Price, or the Adjusted Annual Price as the context requires;
- (g) **"Appropriation"** has the same meaning as given it under section 1 of the FAA;
- (h) **"Arbitration"** has the meaning and procedure set forth in Schedule 10 ("Dispute Resolution Protocol");
- (i) **"Base Annual Price"** means the price of \$@@ (exclusive of GST and inclusive of all other applicable taxes, duties and other charges) submitted by the Contractor, pursuant to the Price Proposal inclusive of any changes pursuant to Section 7.6, and accepted by the Province for the provision of Routine Maintenance Services for 365 days of the Term;
- (j) **"Base Location"** means the locations within the Electrical Service Area in which the Contractor must have personnel presence capable of carrying out the Services required under the Specifications for each municipality listed herein. The base locations for the various electrical service areas are as follows:
- Vancouver Island Service Area - Greater Nanaimo Area and the Greater Victoria Area;
 - Lower Mainland Service Area - Greater Vancouver Area;
 - Southern Interior Service Area - Kamloops, Kelowna, and Nelson; and
 - Northern Region Service Area - Prince George, Terrace, and Fort St. John;
- (k) **"BCTFA"** means the British Columbia Transportation Financing Authority, an agent of the Province continued under the *Transportation Act*;
- (l) **"Bonds"** means the performance and the labour and material payment bonds in the format specified in Schedule 14 ("Bonds"), with the "Bond Amount" in each such bond being \$@@.00;
- (m) **"Cap"** has the meaning set forth in Section 13.10;
- (n) **"Change Order"** means a written order by the Province requiring the Contractor to perform a change to Routine Maintenance Services pursuant to Article 8;
- (o) **"Claim"** means any order, demand, suit, action, prosecution, summons, commencement of legal proceedings, charge, investigation, petition or proceedings from any person or Government Authority, settlement discussions or alternative dispute resolution mechanisms and any termination, suspension, abandonment, discontinuance, appeal or review thereof;
- (p) **"CMC" or "Chargeable Maintenance Claim"** means Damage to Government Property Claim;
- (q) **"Commencement Date"** means @@, 20@@;
- (r) **"Contract Month"** means a calendar month except for the first contract month which will be from @@, 20@@ to @@, 20@@;

- (s) **"Contract Year"** means, a period of @@ days from the Commencement Date ("First Contract Year"), and for every subsequent contract year a period of 12 consecutive months during the Term, commencing on the Anniversary Date and continuing for each 12 consecutive calendar months thereafter;
- (t) **"Contractor"** means @@Company (Partnership) Name, its directors and officers, partners, agents, employees, contractors, successors and assigns;
- (u) **"Contractor's Quality Plan"** means the quality plan developed by the Contractor, and as amended from time to time in accordance with Article 20;
- (v) **"Controlled Person"** means a Subcontractor;
- (w) **"Cost Schedule"** means the schedule of costs with respect to a change(s) in Inventory, as set out in Schedule 6 ("Cost for Changes to Inventory");
- (x) **"Daily Cost"** means, in respect of a particular Contract Year, the Annual Price for that Contract Year divided by the total number of days in that Contract Year (representing the per diem costs to the Province of the Contractor providing the Routine Maintenance Services during that Contract Year);
- (y) **"Damage to Government Property"** means damage to the electrical infrastructure caused by motor vehicles, acts of vandalism, theft, weather events or other acts of God, or other acts of a third party;
- (z) **"Damage to Government Property Claim"** the mechanism through which the Contractor makes an application for recovering the cost of repairing Damage to Government Property by using the CMC form H0036B (Chargeable Maintenance Costs) on the Province's website (http://www.th.gov.bc.ca/mot_org/const_maint/claims_unit/claims_unit.htm). For clarity incidences of Stolen Wire do not form part of Damage to Government Property or damage to government property claims;
- (aa) **"Dispute Resolution Protocol"** means the dispute resolution protocol attached as Schedule 10 ("Dispute Resolution Protocol");
- (bb) **"Electrical Service Area"** means the area described in Schedule 3 ("Electrical Service Area (Map Reference)");
- (cc) **"Equipment Fleet Operations Policy"** means the standard for the lighting and markings of the Contractor's equipment fleets as described in Schedule 11 ("Equipment Fleet Operations Policy");
- (dd) **"Event of Default"** means any event described in Section 21.1;
- (ee) **"Expiry Date"** means @@, 20@@, or @@, 20@@ of the renewal term, as the case may be;
- (ff) **"FAA"** means the *Financial Administration Act*, R.S.B.C. 1996, c.138;
- (gg) **"Fee Schedule"** means the schedule of fees for the provision of Services attached as

Schedule 5 ("Fee");

- (hh) "First Contract Year" means @@, 20@@ to @@, 20@@;
- (ii) "Force Majeure" means:
- (i) acts of God, wars (declared or undeclared), revolutions, riots, insurrections, lockouts, or strikes (including illegal work stoppages) by third parties including lockouts or strikes by or of the Contractor's or a Controlled Person's employees, provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party directly affected as a whole, which is beyond the reasonable control of that party and results in a material delay, interruption or failure by that party in carrying out its duties, covenants or obligations under this Agreement, provided always that lack of money, financing or credit to resolve such contingencies will not be deemed an event of Force Majeure; and
 - (ii) for the purposes of Section 23.2, the failure by the Contractor to obtain or maintain in force commercial general liability insurance as described in Article 10, provided that:
 - (A) the Contractor has used its best efforts to obtain the insurance;
 - (B) the Contractor's failure to retain the insurance, that is in place, is not due to the Contractor's breach of the terms of an existing insurance contract placed in compliance with Article 10;
 - (C) the Contractor's failure to obtain the insurance does not occur as a result of the Contractor's lack of money, financing or credit or due to the Contractor's performance record under this Agreement; and
 - (D) the Province and the Contractor have not resolved the issue of the Contractor's failure to obtain insurance in a manner that is acceptable to both of them.
- (jj) "Government Authority" means a federal, provincial, regional, municipal or local government or subdivision thereof, including an entity or person exercising executive, legislative, regulatory or administrative functions of, or pertaining to, any such government or subdivision;
- (kk) "Government Property" means government property, whether Inventory or otherwise;
- (ll) "GST" means the Goods and Services Tax imposed under the *Excise Tax Act*, R.S. 1985 c. E-15 as amended from time to time, and the regulations prescribed thereunder;
- (mm) "Hardening" means the installation of steel plate junction boxes, the burial of tech cables, or any other method to help prevent or reduce the risk of further wire theft as pre-approved by the Province;
- (nn) "Highway Maintenance Contractor" means the person who has entered into a contract with the Province to provide highway maintenance services to the Province in the relevant

Highway Maintenance Service Area;

- (oo) **"Highway Maintenance Service Area"** means one of the Ministry's service areas for highway maintenance falling wholly or partly within the Electrical Service Area;
- (pp) **"Highways"** means all highways, as defined in the *Transportation Act*, S.B.C. 2004, c.44, within the Electrical Service Area that are under the administration of the Province, or highways that are by arrangement maintained by the Province, and includes:
 - (i) all ancillary works, excavations, embankments and improvements reasonably related to the operation of the highways;
 - (ii) all licenses, rights of way and easements ancillary to highways existing as of the date of this Agreement as determined by reference to the records of the Province; and
 - (iii) any highways that are vested in any Municipality pursuant to the *Local Government Act*, R.S.B.C. 1996 c.323 and *Community Charter*, S.B.C. 2003, c.26, at the discretion of the Province and on written notice from the Province to the Contractor.
- (qq) **"Inventory"** means all of the number and type of electrical devices contained within the Electrical Service Area as set out in Schedule 4 ("Inventory") and as may be revised from time to time in accordance with the provisions of this Agreement;
- (rr) **"LED"** means light emitting diode;
- (ss) **"Local Area Specifications"** means those specifications in Schedule 2 ("Local Area Specifications") for Routine Maintenance Services as may be amended by the Province from time to time by written notice to the Contractor;
- (tt) **"Maintenance Contractor(s)"** means both the electrical maintenance contractors and the Highway Maintenance Contractors or one of them as the context requires;
- (uu) **"Ministry" OR "Minister"** means the Province;
- (vv) **"Ministry Representative"** means the Province's representative, as notified in writing to the Contractor from time to time;
- (ww) **"Non-Conformance Report"** means those reports issued in writing by the Province which document the Contractor's failure to comply with the Contractor's covenants in this Agreement;
- (xx) **"OHS Regulation"** means the British Columbia Regulation 296/97 entitled *"Occupational Health and Safety Regulation"*, as it may be amended from time to time;
- (yy) **"Prime Contractor"** means the "prime contractor" as defined in the *Workers Compensation Act*, R.S.B.C. 1996, c.492;
- (zz) **"Proposal"** means the proposal to perform the Services delivered by the Contractor to the

Province in response to the RFP;

- (aaa) **"Prorated Portion of the Base Annual Price"** means $\frac{1}{365}$ of the Base Annual Price, and for certainty the prorated portion of the Base Annual Price will not be considered as the Adjusted Annual Price;
- (bbb) **"Province"** means Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Transportation and Infrastructure, her agents, servants, employees and contractors;
- (ccc) **"Provincial Material"** means all materials, equipment, components, supplies, tools, manuals, databases and reports that are provided by or on behalf of the Province to the Contractor prior to or during the Term as listed in Schedule 13 ("Provincial Material List") and as updated by the Contractor as described in Article 9, and Provincial Material will remain at all times the property of the Province;
- (ddd) **"Provincial Quality Plan"** means the Electrical Quality Plan Manual available on the Province's website at http://www.th.gov.bc.ca/BCHighways/contracts/electrical/SA_common.htm;
- (eee) **"Repeater System"** means the repeater system described in Schedule 12 ("Repeater System");
- (fff) **"RFP"** means the Request for Proposals number ELEC-SA-R2 issued by the Province in 2011 in connection with the provision of electrical maintenance services in the Electrical Service Area;
- (ggg) **"Recovered Amount(s)"** means amount(s) recovered by the Province in respect of a Damage to Government Property Claim respecting Damage to Government Property as referred to in Article 14;
- (hhh) **"Revised Daily Cost"** means, in respect of a particular Contract Year, the revised daily cost to the Province of the Contractor providing the Routine Maintenance Services during that Contract Year as calculated from time to time by the Province pursuant to Article 7;
- (iii) **"Routine Maintenance Services"** means those routine electrical maintenance services described as such in the Specifications and Local Area Specifications which will be provided with respect to the Inventory and all work except Additional Services;
- (jjj) **"Safety Program"** means an occupational health and safety program in compliance with the requirements of and as certified by the Workers Compensation Board;
- (kkk) **"Services"** means the provision of all labour, materials and equipment for the purpose of providing the electrical maintenance services described as such in the Specifications in Schedule 1 ("Specifications") and Schedule 2 ("Local Area Specifications") and Schedule 8 ("Additional Services"), as those maintenance services may be changed from time to time in accordance with Article 8, and includes Additional Services and Routine Maintenance Services;
- (III) **"Specifications"** means those specifications in Schedule 1 ("Specifications") and

Schedule 2 ("Local Area Specifications") for Routine Maintenance Services as may be amended by the Province from time to time by written notice to the Contractor;

- (mmm) "Stolen Wire" means wire stolen by third parties from the electrical infrastructure;
- (nnn) "Subcontractor(s)" means the Contractor's subcontractors and sub-subcontractors and their servants, employees, agents, management, shareholders, directors, officers and suppliers;
- (ooo) "Term" means a period of @@ years and @@ days and one renewal period of a further @@ years at the Province's discretion, as described in Section 3.2 and subject to earlier termination pursuant to Article 21;
- (ppp) "Unit Price" or "Unit Prices" means the price or those prices respectively, exclusive of GST and inclusive of all other applicable taxes, duties and other charges, as set out in Schedule 8 ("Additional Services") may be revised from time to time in accordance with Schedule 2 ("Local Area Specifications"), payable to the Contractor for the provision of Additional Services;
- (qqq) "UPS" means Uninterruptible Power Supply;
- (rrr) "Wire Theft Cap" has the meaning ascribed in Article 15;
- (sss) "Work Plan" means a work plan for upgrading aging Inventory set out in Section 13.11 - 13.14;
- (ttt) "Workers Compensation Act" means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended from time to time, and the regulations prescribed thereunder; and
- (uuu) "Working Day" and "Work Day" means any day which is not a Saturday, a Sunday or a day on which Provincial government offices are closed in British Columbia.

2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Contractor represents and warrants to the Province on the execution of this Agreement and at all times during the Term that:
 - (a) if the Contractor is a corporation, the Contractor is duly organized and validly existing under the laws of British Columbia, or under the laws of any other province or state in which case the Contractor is registered extra-provincially in British Columbia;
 - (b) if the Contractor is a corporation, the Contractor is in good standing with respect to the filing of annual reports according to the records of the Office of the Registrar of Companies in British Columbia;
 - (c) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
 - (d) this Agreement has been legally and properly executed by the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms;

- (e) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement are true and correct;
- (f) the Contractor has no knowledge of any fact that might materially adversely affect the Contractor's properties, assets, condition (financial or otherwise), business or operations or the Contractor's ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by the Contractor of or an Event of Default by the Contractor under:
 - (i) any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on the Contractor;
 - (ii) the Contractor's constating documents; or
 - (iii) any contract or agreement to which the Contractor is a party;
- (h) if the Contractor is a corporation, the authorized capital of the Contractor, if applicable, is as disclosed in Schedule 18 ("Contractor Details");
- (i) if the Contractor is a corporation, the legal and beneficial ownership and effective control of all of the authorized, issued and outstanding voting shares of the Contractor, if applicable, is as disclosed in Schedule 18 ("Contractor Details");
- (j) if the Contractor is a corporation, there are no agreements, options or rights of any kind held by any person with respect to any of the voting shares of the Contractor, if applicable, except as disclosed in Schedule 18 ("Contractor Details");
- (k) the Contractor has good safekeeping, marketable title to and possession of all the Contractor's assets, free and clear of all liens, charges or encumbrances except those disclosed in Schedule 18 ("Contractor Details");
- (l) the Contractor is not a party to any litigation and has no knowledge of any Claims against it or potential Claims against it that would materially affect the Contractor's provision of Services or financial condition;
- (m) there are no liabilities of the Contractor, contingent or otherwise, that are not disclosed or reflected in Schedule 18 ("Contractor Details") herein except those incurred in the ordinary course of its business:
 - (i) if the Contractor is a partnership, then the identification of all of the partners of the partnership and their respective interests in the partnership are as disclosed in Schedule 18 ("Contractor Details"); if the Contractor is a partnership and if any of the partners of the partnership are corporate entities, then Schedule 18 ("Contractor Details") discloses the authorized capital of each corporate partner, the legal and beneficial ownership and effective control of the authorized, issued and outstanding voting shares of each corporate partner, and any agreements, options or rights of any kind held by any person with respect to any voting shares of each corporate partner; and

- (ii) the representations and warranties required under the other paragraphs of Section 2.1 with respect to a Contractor which is a joint venture or partnership are true for each corporate venturer or partner.
- (n) the Contractor has filed all tax, corporate information and other returns, required to be filed by the laws of British Columbia, Canada and any other jurisdiction where the Contractor is required to file such returns, and has complied with all workers compensation legislation and other similar legislation to which it may be subject and has paid all taxes, fees and assessments calculated to be due by the Contractor under those laws as of the date of this Agreement;
- (o) the Contractor is not in breach of any statute, regulation or bylaw applicable to the Contractor or its operations;
- (p) the Contractor holds all permits, licenses, consents and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them, that are necessary in connection with the operations of the Contractor;
- (q) the making of this Agreement, and the performance of and compliance with the terms of this Agreement does not conflict with and will not result in a breach of, or constitute a default under, the memorandum or articles of the Contractor or the acceleration of any indebtedness under, any terms, provisions or conditions of, any indenture, mortgage, deed of trust, agreement, security agreement, license, franchise, certificate, consent, permit, authority or other instrument to which the Contractor is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which the Contractor is bound or, to the knowledge of the Contractor, any statute, regulation or bylaw applicable to the Contractor;
- (r) the Contractor has no knowledge of any untrue or incorrect representation or assurance, whether verbal or written, given by the Contractor, its directors or officers to the Province in connection with this Agreement;
- (s) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Contractor to fully perform the Services;
- (t) the Contractor has independently reviewed all labour relations issues related to the performance of the Contractor's obligations under this Agreement;
- (u) the Contractor has all necessary workers compensation coverage, to cover the performance of the Contractor's obligations under this Agreement;
- (v) if more than one person enters into this Agreement as the Contractor, then those persons will be obligated jointly and severally under this Agreement; and
- (w) a senior officer of the Contractor will certify and forward to the Province, on each Anniversary Date, that all representations and warranties of the Contractor in this Agreement remain true and correct as if made on the date of such certificate, and that the Contractor is not in default under this Agreement.

- 2.2 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by, or on behalf of, the Contractor are material and will conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province.
- 2.3 All statements contained in any certificate or other document delivered by or on behalf of the Contractor to the Province under this Agreement or in connection with any of the transactions contemplated by this Agreement will be deemed to be representations and warranties of the Contractor under this Agreement.
- 2.4 The provisions of Sections 2.1-2.3 will continue in full force and effect notwithstanding the expiry or sooner termination of this Agreement.

3. APPOINTMENT, TERM AND RENEWAL OF AGREEMENT

- 3.1 The Province retains the Contractor to provide the Services in accordance with the terms of this Agreement.
- 3.2 The Contractor will provide the Services to the Province during the term of this Agreement which term will, notwithstanding the date of execution and delivery of this Agreement, be deemed to commence on the Commencement Date and will end on the Expiry Date or such date of earlier termination as may be established in accordance with Article 21 or any other termination provisions of this Agreement, subject to the possible renewal of the Agreement pursuant to the terms set out in Section 3.4.
- 3.3 The Province's obligations under this Agreement are subject to the following conditions precedent:
- (a) The Contractor fulfilling all obligations which it is required to fulfill under the RFP prior to the Commencement Date despite the Contractor's execution of the Agreement;
 - (b) the Contractor's fulfillment of its obligations included in Section 10.2 on or before the 30th day prior to the Commencement Date; and
 - (c) the Contractor providing written confirmation, no earlier than 90 days but no later than the 30th day prior to the Commencement Date, in a form satisfactory to the Province, that all of the representations and warranties included in Article 2 are true and accurate as of the date of the confirmation.

The foregoing conditions precedent will be satisfied by the Contractor, on written notice to the Province, or waived by the Province, on written notice to the Contractor, to be received on the dates specified for performance, failing which this Agreement will be terminated without prejudice to the rights and remedies of the Province under the RFP process and this Agreement, at law and in equity.

The foregoing conditions precedent are included for the sole benefit of the Province and may be unilaterally waived by the Province at any time prior to the dates specified for satisfaction of the conditions.

- 3.4 The Province will be entitled in its sole discretion to elect to renew the Agreement for a further @@

Contract Years, such that the Expiry Date will then become @@ Contract Years after the original Expiry Date. If the Province elects to renew the Agreement, the following provisions will apply:

- (a) the Province will give the Contractor notice of the Province's election to renew the Agreement no later than 12 months prior to the original Expiry Date set out in this Agreement;
- (b) the Contractor must no later than 10 months prior to the original Expiry Date provide the Province with the following documents as a condition precedent of the renewal, failing which the Province will have the option of revoking the notice of renewal with the result that the Term of the Agreement will end on the original Expiry Date:
 - (i) a consent of surety in the form attached in Schedule 16 ("Insurance & Securities (Renewal Term)"); and
 - (ii) an undertaking to provide liability insurance in the form attached in Schedule 16 ("Insurance & Securities (Renewal Term)") (with the Province notifying the Contractor of the amount of insurance to be set out in the undertaking no later than 12 months prior to the original Expiry Date);
- (c) the documents to be submitted by the Contractor under Section 3.4(b) will be in the same format as set out in Schedule 16 ("Insurance & Securities (Renewal Term)") and the following provisions will apply:
 - (i) the only changes between the former undertaking to provide liability insurance and the updated undertaking to provide liability insurance replacing it, will be that coverage is to be provided to and including the new Expiry Date of @@, 20@@ and possibly the name of the issuing insurer; and
 - (ii) the updated undertaking will be submitted to the Province no later than 4 days before the expiry of the original undertakings;
- (d) the foregoing condition precedents set out in Section 3.4 (b) and (c) are included for the sole benefit of the Province and may be unilaterally waived by the Province at any time prior to the dates specified for satisfaction of the conditions; and
- (e) subject to the satisfaction of the condition precedents in Section 3.4(b) or (c) above or the waiver of same by the Province or the Province not terminating the Agreement prior to or on the original Expiry Date for an Event of Default, the Term of the Agreement will be extended for a further @@ Contract Years to and including @@, 20@@ and all the terms and conditions of the Agreement will continue to apply during this renewal with any necessary changes as if the original Expiry Date had been the same as the Expiry Date of the renewal.

4. LEGAL RELATIONSHIP - INDEPENDENT CONTRACTOR

4.1 The Contractor is an independent contractor and not the servant, employee, partner or agent of the Province unless otherwise specified in Sections 6.3 and 13.8.

4.2 The Contractor will not, in any manner whatsoever, commit or purport to commit the Province to

the payment of any money to any person.

4.3 The Province may, from time to time, give such instructions to the Contractor as the Province considers necessary in connection with provision of the Services, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Province with respect to the manner in which such instructions are carried out.

4.4 No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement as between the Province and the Contractor.

5. PRIME CONTRACTOR

5.1 The Contractor is the Prime Contractor in connection with the provision of the Services and this Agreement, and will, no later than 15 days after the Commencement Date, deliver to the Province:

(a) written notice of the name of the person appointed by the Contractor who will discharge the responsibilities of a "qualified coordinator" as described in the OHS Regulation and the Workers Compensation Act, for the Contractor; and

(b) a copy of the Safety Program.

5.2 Notwithstanding Section 5.1, the Contractor will not be designated as the Prime Contractor in the event the Services being rendered by the Contractor are within the limits of construction of an ongoing highway construction improvement project, in which case the construction contractor is designated by the Province as the Prime Contractor and the reporting protocol as between the Contractor, the construction contractor and the Province is set forth in Schedule 9 ("Prime Contractor Designation").

5.3 The Province may, from time to time;

(a) on prior written notice to the Contractor, appoint a contractor other than the Contractor as the Prime Contractor in connection with works and activities that may be undertaken and performed at any location or locations in the Electrical Service Area, for a period of time, and such works and activities, location(s), and period(s) of time will be specified and defined by the Province in the written notice; and

(b) on conclusion of the works and activities referenced in Subsection (a), deliver written notice to the Contractor of the conclusion of such works and activities and, upon receipt of such notice the Contractor will resume the responsibilities of the Prime Contractor in connection with the Services and the Agreement at the applicable location.

6. SERVICES & WARRANTY

6.1 The Contractor will provide the Services to the Province, on or in respect of all Highways and Inventory within the Electrical Service Area, in accordance with the terms and conditions of this Agreement.

- 6.2 The Contractor will perform:
- (a) the Routine Maintenance Services in accordance with this Agreement; and
 - (b) the Additional Services in accordance with this Agreement.
- 6.3 Any materials, equipment or improvements installed or deposited on the Highways by the Contractor during the Term as part of the Services, including any such items used in the repair or replacement of the Inventory, will immediately become the sole property of the Province and BCTFA and the Contractor will, at the request of the Province, assign or transfer to the Province any warranties available with respect to the same with accompanying documents and records. Notwithstanding Section 4.1, the Contractor will act on behalf of the Province with respect to warranty claims arising during the Term from Routine Maintenance Services performed by the Contractor unless the warranties have been assigned or transferred to the Province at its request. The Contractor is required by Section 13.8 to perform warranty work on Routine Maintenance Services as it arises.
- 6.4 Notwithstanding any other provision of the Agreement or the termination of the Agreement, the Contractor warrants to the Province for a period of 365 days following the actual completion date of any Services, whether Routine Maintenance Services or Additional Services, that the work is free from any defect resulting from the labour and/or material, if any, supplied by the Contractor as part of the Services and such warranty will survive the termination of this Agreement. The Contractor will, upon notification by the Ministry Representative during the Term, promptly and diligently remedy any defects that are warranted by the Contractor, to the satisfaction of the Ministry Representative. No additional compensation will be payable to the Contractor for remedying such defects.
- 7. CHANGES TO INVENTORY WITHIN ELECTRICAL SERVICE AREA**
- 7.1 The Province may, in its sole discretion, for any purpose including but not limited to the transfer of the operation of a portion of the Highway to a third party, on one day's written notice to the Contractor to increase or decrease the level and/or types of Inventory within the Electrical Service Area, and the Contractor will perform the Services required with respect to the changed level or types of Inventory.
- 7.2 For the purposes of Section 7.1, where the Province has not provided the notice to the Contractor to amend the Inventory, notice will be deemed to have been given when a final inspection report by the Contractor of a new electrical installation is submitted to the Province.
- 7.3 In the event there is a change to Inventory pursuant to Section 7.1, the Annual Price will be adjusted if the cumulative net change in the Daily Cost for the then current Contract Year (determined in accordance with Section 7.4 and Schedule 6 ("Cost for Changes to Inventory")) exceeds 2%, positive or negative, as calculated by the Province in accordance with Section 7.5. In such case, the fees payable pursuant to Section 13.1 and that portion of the Annual Price attributable to the remainder of that Contract Year, will be adjusted by the change in Daily Cost determined by the Province under Section 7.5, from the effective date of the latest change made pursuant to Section 7.1 to the end of that Contract Year.
- 7.4 If the fees payable to the Contractor under Section 13.1 for a particular Contract Year are adjusted pursuant to Section 7.3, then the Contractor will not be entitled to any additional compensation in

any form whatsoever, nor will the compensation payable hereunder be reduced, as a result of the changes referred to in any further notice delivered under Section 7.1 during that Contract Year unless the cumulative net change in the Revised Daily Cost for that Contract Year exceeds 2%, positive or negative, as determined by the Province in accordance with Section 7.5, and in each such case, the fees payable pursuant to Section 13.1 and that portion of the Annual Price attributable to the remainder of that Contract Year, will be adjusted by the change in the Revised Daily Cost determined by the Province under Section 7.5, from the effective date of the latest change made pursuant to Section 7.1 to the end of that Contract Year.

7.5 The Province will:

- (a) on or before the effective date of each notice delivered under Section 7.1, complete the calculations in Schedule 6 ("Cost for Changes to Inventory");
- (b) on or before the effective date of a change in compensation under Section 7.3 or 7.4, calculate a Revised Daily Cost in accordance with Schedule 6 ("Cost for Changes to Inventory"); and
- (c) provide copies of the calculations to the Contractor forthwith.

7.6 In the event there are changes to Inventory between the RFP closing date and the Commencement Date (whether such changes are an increase or decrease in Inventory), such changes will be reflected in a 30 day written notice from the Province to the Contractor and the Province will adjust the Annual Price for the First Contract Year pursuant to the calculations in Schedule 6 ("Cost for Changes to Inventory"). Furthermore, as a consequence of such changes in Inventory, the Province may in that notice also adjust the Insurance limits in Article 10 and Schedule 15 ("Insurance").

7.7 The calculations of the Province under this Article 7 will be final and binding on the parties.

7.8 The Contractor will be limited to the compensation adjustments as specified in this Article, and the Contractor will not have any other remedies either in contract under this Agreement or for claims for damages in tort with respect to any notices issued under Section 7.1.

8. CHANGES TO ROUTINE MAINTENANCE SERVICES

8.1 In order to promote and enhance public safety and efficiency, the Contractor will:

- (a) in consultation with the Province, continually review and re-evaluate the Routine Maintenance Services, including the methods, means and technology for providing the Routine Maintenance Services, and in conducting that review will take into account changing technology in the electrical services maintenance industry, changing methods, means, technology economic and environmental conditions and changing public requirements;
- (b) advise the Province if the Contractor considers that any part of the Routine Maintenance Services, including the methods, means and technology, should be changed in a material way, and submit the proposed change to the Province for its consideration; and
- (c) reasonably co-operate with the Province in tests to accommodate the new technology,

methods and means of providing the Routine Maintenance Services.

- 8.2** The Province may, in its discretion and by delivering a Change Order to the Contractor, direct the Contractor to vary, amend or modify the Routine Maintenance Services, or any part thereof, whether as a result of reviews or proposals under Section 8.1 or on the Province's own initiative. The Change Order will specify the date by which the change is to be implemented by the Contractor.
- 8.3** When implementing the Change Order in Section 8.2, in the event there is an impact to the net costs in material, equipment and labour, the Contractor will obtain the best value for money when procuring any work, services, supplies, materials or equipment and will hold itself to a standard for the procurement that is no less than good industry practice.
- 8.4** The Parties acknowledge that not all Change Orders will include a net cost change to the Annual Price.
- 8.5** As a consequence of the Change Order, the Contractor will at its cost prepare and deliver to the Province a report within 30 days of the Contractor receiving the Change Order that includes:
- (a)** the net amount of all cost changes (positive or negative), if any, in material, equipment and labour reasonably required to accommodate and implement the Change Order in a cost effective manner and provide overall value to the Province; and
 - (b)** sufficient relevant information to enable the Province to properly evaluate the compensation adjustment, if any, relating to the Change Order including:
 - (i)** the timing for implementing the compensation adjustment;
 - (ii)** the estimated net amount of any cost savings to be realized;
 - (iii)** a detailed summary of the prices, costs and charges used to calculate the compensation adjustment including supporting calculations; and
 - (iv)** the calculation in (iii) above will be for a Contract Year that is comprised of a 365 day period.
- 8.6** If the Province agrees to the compensation adjustment and if such adjustment is effective for a portion of the Contract Year, or if the compensation adjustment is effective in the First Contract Year that is less than a 365 day period, the Province may at its discretion pay a prorated portion of the compensation adjustment for the remainder of that Contract Year. The full value of the compensation will be included in the next Annual Adjustment Process.
- 8.7** If the Province does not agree to the compensation adjustment to the Annual Price as identified in the Contractor's report pursuant to Section 8.5, then the Province will provide the Contractor with a written notice no less than 30 days from the delivery of the change report that:
- (a)** cancels the Change Order;
 - (b)** directs the Contractor to proceed with the Change Order with the compensation adjustment to be determined in accordance with the Dispute Resolution Protocol and the

dispute will not affect the timely delivery of the change; and

- (c) directs the Contractor to prepare an amended report based on an amended Change Order that will accompany the notice, and thereafter the Parties will follow the procedure set out in Sections 8.5 and 8.7(a) and (b) for that amended Change Order. For clarity, if the Parties do not agree to the compensation adjustment to the amended Change Order, the Province may then cancel the Change Order pursuant to Section 8.7(a) or invoke the Dispute Resolution Protocol pursuant to Section 8.7(b).

8.8 The Parties agree that the determination of the compensation adjustment pursuant to the Dispute Resolution Protocol is binding and is the only relief and compensation to which the Contractor will be entitled in respect of a Change Order and the Contractor will have no other claims or remedies either in contract or for damages in tort under or in connection with this Agreement or any notices issued under this Article 8.

8.9 The Contractor will not receive the compensation adjustment while the Dispute Resolution Protocol is in process and the Province will make any payment adjustments to the Annual Price or Adjusted Annual Price (as the case may be) based on the determination of the Arbitrator.

9. PROVINCIAL MATERIAL

9.1 The Province will supply the Contractor with the Provincial Material as detailed in Schedule 13 ("Provincial Material List") prior to or on the Commencement Date and the Contractor will accept it on an "as is" basis and acknowledges that the Province has made no representations or warranties with respect to its condition. The Provincial Material will, at all times, remain the exclusive property of the Province and the Province may, in its sole discretion, as applicable, transfer ownership of the same, or any part thereof, to the Contractor. At the expiry or termination of this Agreement, the Contractor will return all Provincial Material to the Province including but not limited to all manuals and reports (including any electronic and hard copies made by the Contractor), to the Province which has not been so transferred to the Contractor. The Provincial Material will be returned by the Contractor in the same condition it was given to the Contractor, in working order. If any part of the Provincial Material is lost, damaged or reaches its end-of-life before the expiry of this Agreement, that material will be replaced by the Contractor with the same product or with a comparable product to the Province's satisfaction.

9.2 The Contractor may reuse removed or recovered Inventory only with the written consent of the Province.

10. INSURANCE AND INDEMNITY

10.1 The Contractor will obtain and maintain in force during the Term:

- (a) commercial general liability insurance providing coverage of not less than \$10,000,000.00 inclusive per occurrence for bodily injury, death and property damage and including loss of use of property, which may arise directly or indirectly out of the acts or omissions of the Contractor, or Subcontractors, including all persons, firms or corporations who perform any of the Services, or any of them, in any way relating to maintenance of the Inventory within the Electrical Service Area or the performance of Services otherwise under this Agreement with the Province added as an additional named insured in the manner specified in Schedule 15 ("Insurance");

- (b) automobile liability insurance in an amount not less than \$5,000,000.00 and automobile physical damage insurance including collision and comprehensive coverage, covering all automobiles and vehicles owned, rented or leased by the Contractor, that are required by law to be licensed; and
- (c) equipment insurance covering all equipment owned, rented or leased (with policy limits and conditions that may be applicable to any rental or lease agreements) by the Contractor and utilized in the performance of the Services by the Contractor, or Subcontractors, including all persons, firms or corporations who perform any of the Services, or any of them, against "all risks" of loss or damage.

The terms of the foregoing insurance coverage will meet the insurance requirements in Schedule 15 ("Insurance") and will be placed with an insurer or insurers acceptable to the Province, licensed in British Columbia or Canada.

- 10.2 The Contractor will submit, no later than 30 days before the Commencement Date and if applicable no later than 30 days before the renewal term, a certificate of insurance on the Province's specimen referred to in Schedule 15 ("Insurance") as evidence that the insurance required under Section 10.1 has been obtained and the Contractor will, upon the request of the Province made at any time or times, submit to the Province evidence, satisfactory to the Province, that the insurance remains in force and effect.
- 10.3 The Contractor will ensure that the insurance described in Section 10.1 may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Province and if notice of cancellation or material change is given the Contractor's obligations under Section 10.1 will continue in effect.
- 10.4 The Contractor will provide 30 days' written notice to the Province of any expiry, non-renewal, lapse, refusal to extend by the insurer, cancellation or any material change of the insurance policy or policies required by the Contractor pursuant to this Article.
- 10.5 The Contractor will, at the request of the Province, in the Province's sole discretion, secure insurance to replace the insurance coverage provided in compliance with Section 10.1 with new coverage terms or increased policy limits, as specified by the Province.
- 10.6 The Province may, in its discretion, review the insurance requirements stipulated by this Article and Schedule 15 ("Insurance") and the Contractor will cooperate as required to implement any changes arising from this review.
- 10.7 The Contractor will indemnify and save harmless the Province from and against all Claims, liabilities, demands, losses, damages, costs and expenses, legal defence costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Province at any time or times (whether before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor and its Subcontractors or any of them pursuant to this Agreement including, without limitation, any Claim against the Province for failure to supervise or inspect the work which is performed by the Contractor pursuant to this Agreement which indemnity will survive the expiration or sooner termination of this Agreement.

10.8 The Contractor will be responsible for compliance with all conditions and regulations under the *Workers Compensation Act*, and for all assessments and levies which may be made thereunder.

11. BONDS

11.1 The Contractor will obtain and maintain the Bonds in full force and effect during the Term subject to the provisions of this Article 11 and in the form of Schedule 14 ("Bonds").

11.2 The Bonds will both be issued by one surety company created and existing under the laws of Canada and duly authorized to transact the business of suretyship in Canada and the Bonds will be delivered by the Contractor to the Province prior to or on execution of this Agreement.

11.3 No later than six months before the date of renewal, if applicable, the Contractor will deliver to the Province the amendment and extension agreement executed by the Contractor and the surety in the form provided in Schedule 14 ("Bonds").

11.4 Notwithstanding Section 11.3, if the Contractor selects an alternate surety company, that surety company must be acceptable to the Province at the Province's discretion, and the bonds must be in the form provided in Schedule 14 ("Bonds") with the same penal amount, etc.

11.5 In the event of a renewal of the Agreement pursuant to Section 3.4, the provisions of Sections 11.1 – 11.4 will apply *mutatis mutandis* to the renewal period.

12. CONTRACTOR'S COVENANTS

12.1 The Contractor will:

- (a) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent Government Authority or branch or agency thereof directly or indirectly applicable to the Contractor under this Agreement, or the Services to be performed under this Agreement including but not limited to local municipal bylaws, the *Motor Vehicle Act and Regulations*, the *Workers Compensation Act* and the *OHS Regulation*, the *Safety Standards Act* and the *Electrical Safety Regulation B.C. Reg 100/2004*, the *Transportation Act*, the *Canadian Electrical Code* and the *Electrical Safety Act*, whether directly or indirectly applicable to the Contractor or this Agreement, including by ensuring that the provision of and performance of the Services, complies with all such laws, by-laws, orders, directions, rules and regulations;
- (b) ensure that the representations and warranties set forth in Article 2 are true and correct at all times during the Term and provide evidence to that effect to the Province on the written request of the Province;
- (c) maintain its corporate existence and carry on and conduct its business in a proper business-like manner in accordance with good business practice and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles or international financial reporting standards, whichever is applicable to the Contractor, applied on a consistent basis;
- (d) within 15 days of the delivery of a written demand from the Province, provide the Province with such information and documents with respect to the affairs of the Contractor as the

Province may reasonably request;

- (e) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking in connection to this Agreement;
- (f) observe, perform and comply with each covenant and agreement on its part contained in this Agreement;
- (g) provide and maintain all financial management and technical expertise necessary for the Contractor to carry out its obligations under this Agreement;
- (h) co-operate with the Province, the Highway Maintenance Contractor and any other contractors providing services to the Province in the Electrical Service Area and in areas adjacent to the Electrical Service Area to ensure that the Contractor provides the Services in a manner that is compatible with the services provided by the Province and these third parties. This cooperation includes but is not limited to lock-out procedures;
- (i) apply its best efforts and will work in close cooperation and harmony with the Province and will meet or exceed the Specifications and performance time frames included in the Specifications, free of defects or deficiencies and through competent staff, all to the satisfaction of the Province;
- (j) continually train its staff in the safe operation of electrical maintenance services equipment and facilities to the satisfaction of the Province including but not limited to ensuring that during the first Contract Year any of the Contractor's staff working on traffic signal equipment are IMSA (International Municipal Signal Association) Traffic Signal Level 1 certified, and that during the remainder of the Term of the Agreement any such staff are IMSA Traffic Signal Level 2 certified;
- (k) provide and maintain at all times sufficient staff, facilities, materials, appropriate equipment and approved subcontract agreements in place and available to it as required to fully perform the Services, and in no event will the level of resources deployed in the field and ready to respond be less than what is required to supply the Additional and Routine Maintenance Services;
- (l) ensure that all Operational Vehicles and Equipment (as that term is defined in Schedule 11 ("Equipment Fleet Operations Policy")) meet all requirements of Schedule 11 ("Equipment Fleet Operations Policy"), and such other policy directives of the Province delivered to the Contractor from time to time;
- (m) notwithstanding any limitation in the OHS Regulation which would exempt the Contractor from the requirement to initiate and at all times maintain an occupational health and safety program, initiate and at all time maintain the Safety Program in connection with the Services and this Agreement, and ensure that the Safety Program:
 - (i) is designed to prevent injuries and occupational diseases within the contemplation of the *Workers Compensation Act* and the *OHS Regulation*;
 - (ii) provides for the establishment and maintenance of a system or process to ensure

compliance with the *Workers Compensation Act* and the *OHS Regulation* in respect of the Services and this Agreement; and

- (iii) satisfies the requirements of an occupational health and safety program under the *Workers Compensation Act* and the *OHS Regulation*;
- (n) subject to Articles 5, discharge the responsibilities of the Prime Contractor under the *Workers Compensation Act* and the *OHS Regulation*, in connection with the Services and this Agreement;
- (o) upon receipt of the Province's written notice under Article 5.3, cooperate in good faith with the contractor appointed the Prime Contractor for the location and the period of time described in the Province's notice, including the coordination of health and safety activities;
- (p) perform all of the Contractor's obligations included in the Specifications;
- (q) no later than 30 days prior to the Commencement Date, provide to the Province all of the Contractor information specified in Schedule 18 ("Contractor Details") with respect to a corporate Contractor, a Contractor that is a partnership and each corporate partner of a Contractor that is a partnership;
- (r) no later than 30 days prior to the Commencement Date, provide to the Province an executed Privacy Protection Schedule in the format specified in Schedule 17 ("Privacy Protection");
- (s) provide a toll free "1-800" telephone number which the public can use to contact the Contractor and which will be manned or monitored by the Contractor 24 hours a day, seven days a week;
- (t) at all times promptly respond to Services complaints from members of the public, regulatory agencies, police authorities, local governments and the province of British Columbia and track same for the purpose of identifying trends and informing the Province of those trends;
- (u) submit its traffic management plan to the local District Manager of Transportation (DMT) for preapproval prior to the commencement of Services in which there will be a road or lane closure;
- (v) contact and accept direction of the Ministry's local avalanche technician prior to commencing Services in an avalanche zone where the hazard is posted as "low" or greater;
- (w) provide accurate infrastructure locates to third parties as part of the Contractor's Routine Maintenance Services and the Contractor will also confirm the infrastructure locates prior to commencement of its own work; and
- (x) provide record drawings of modifications or amendments to Inventory for both Routine Maintenance Services and Additional Services in hardcopy. For clarity, these record drawings need not be signed and sealed by a professional engineer.

13. ANNUAL PRICE AND FEES

- 13.1 In consideration of the Contractor providing the Routine Maintenance Services and performing all other obligations of the Contractor under this Agreement, the Province will, subject to the terms of this Agreement including Sections 21.2 and 23, pay to the Contractor the Annual Price corresponding to each Contract Year in the manner set out in Part 1 of Schedule 5 ("Fee").
- 13.2 Except as specifically provided in this Article 13, the sums described in Section 13.1 constitute the maximum amounts payable to the Contractor for its performance of the Routine Maintenance Services and the Contractor will not be entitled to any additional compensation for its performance whether or not the work actually undertaken by the Contractor is described in this Agreement and without limiting the generality of the foregoing, the Contractor will not be entitled to any compensation in a Contract Year beyond the Annual Price for that Contract Year unless the Annual Price is adjusted by the Province during that Contract Year in accordance with this Agreement.
- 13.3 In consideration of the Contractor providing Additional Services, the Province will pay the Contractor in accordance with Schedule 8 ("Additional Services").
- 13.4 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Contractor under this Agreement is subject to:
- (a) there being sufficient monies available in an Appropriation to enable the Province, in any fiscal year or part thereof when any payment of money by the Province to the Contractor falls due under this Agreement, to make that payment; and
 - (b) Treasury Board, as defined in the FAA, not having controlled or limited, under the FAA, expenditure under any Appropriation referred to in Subsection (a) of this section.
- 13.5 All sums due and owing by the Contractor to the Province under this Agreement will be set off by the Province during the Term.
- 13.6 All payments made under this Agreement, net of sums set off as provided under Section 13.5, will be paid by electronic fund transfer to the appropriate party.
- 13.7 Concurrent with each setoff payment, the Province will deliver to the Contractor an accounting of the sums due and owing by the parties under the Agreement to the date of the payment.
- 13.8 The Contractor will be required as part of its Routine Maintenance Services to repair or replace any item of Inventory which:
- (a) was installed by a party other than the Contractor and/or on which an installer, manufacturer and/or supplier's warranty exists; and
 - (b) has to be repaired or replaced within a warranty period provided by that installer, manufacturer and/or supplier, and the Province may:
 - (i) pursue a Claim against the installer, manufacturer and/or supplier and if successful, will reimburse the Contractor any such recovered amount, minus all reasonable expenses incurred in making the Claim; or
 - (ii) direct the Contractor to act on behalf of the Province with respect to warranties and

Claims thereof (including but not limited to LED lights and battery warranties) and if successful, the Contractor will retain any such recovered amount;

and the Contractor will not make or purport to make on its own behalf or on behalf of the Province any Claim whatsoever against such installer, manufacturer and/or supplier as a result of such defect, and assigns to the Province all of its rights to make any such Claim unless the Province and the Contractor confirm in writing that the Contractor will act on behalf of the Province in the making and the pursuit of a particular Claim.

- 13.9** If the Contractor is directed by the Province as part of Routine Maintenance Services to replace any Inventory item with an item of a different type and costing more to replace than the replacement item required under the Specification, then the Province will pay the Contractor the difference between such material and equipment costs with no markup for overhead and profit.
- 13.10** If the Contractor is required as part of Routine Maintenance Services to replace more than @@ failed LED signal head light sources in the First Contract Year and @@ failed LED signal head light sources in any subsequent Contract Year (the "Cap") then, the Province will at its discretion either supply the Contractor with the additional signal head light source LEDs or reimburse the Contractor for the direct cost of purchasing same (with no markup for profit or overhead) always subject to the signal head light source LEDs below the Cap not having failed due to vandalism or breakage. In addition, the Contractor must present the Province with the invoices concerning the purchase of same as part of the next monthly report. For greater certainty, the labour and equipment to replace all failed signal head light source LEDs (above and below the Cap) are included in Routine Maintenance and are therefore not subject to additional compensation.
- 13.11** Included in the Annual Price for the Term (not including renewal period, if any) is a sum of \$@@.00 for the First Contract Year and \$@@.00 for each subsequent Contract Year, for work to replace or upgrade aging items of Inventory in the Electrical Service Area (such sum inclusive of all labour, equipment and materials). The value of the work completed under the Work Plan will be credited using a value as agreed to by both parties or as determined by the Province by utilizing the Unit Prices in Schedule 8 ("Additional Services).
- 13.12** In the event this Agreement is renewed for a further @@ Contract Years, the Province will apply the cumulative Price Adjustment Factor described in Schedule 7 ("Annual Adjustment Process") to that \$@@.00 in Section 13.11, for the sum that will become the new value for Work to replace or upgrade aging items of Inventory for the renewal term. Except for mathematical error by the Province in applying the cumulative Price Adjustment Factor, the Contractor cannot dispute the new value of Inventory upgrades and the Parties hereto will be bound to the amendment.
- 13.13** Each Contract Year, the Contractor will deliver to the Province a Work Plan for upgrading aging Inventory satisfactory to the Province:
- (a) that includes a detailed description of the items of Inventory to be upgraded, the location, and anticipated completion date;
 - (b) by no later than 30 days after the Commencement Date, for the First Contract Year; and
 - (c) each year thereafter on or before an Anniversary Date, for the Contractor Year commencing on that Anniversary Date.

- 13.14** When the Work Plan is submitted by the Contractor to the Ministry Representative for approval, the

Ministry Representative will, as soon as reasonably practicable, and in any event not later than 5 Working Days after receiving the proposed Work Plan, advise the Contractor whether the plan is satisfactory to the Province and, if not satisfactory, in what respects it is not satisfactory. The Province will consider, without limitation, the prioritization of the work and costs in evaluating the Contractor's Work Plan for approval. If the Contractor does not deliver the Work Plan by the applicable date as specified herein, the Province may impose on the Contractor a Work Plan by delivering to the Contractor a copy of the Work Plan as prepared by the Province.

- 13.15 In the event the work is not completed in accordance with the Work Plan, for clarity the Province will consider such event an Event of Default.

14. DAMAGE TO GOVERNMENT PROPERTY

Damage to Government Property Invoice

- 14.1 The Contractor is responsible for all costs to repair Damage to Government Property except for the cost of materials over \$1,500.00 per incident. The Contractor will submit an invoice to the Province for the cost of materials that exceed \$1,500.00.
- 14.2 At the Province's discretion, in the event the Contractor fails to submit an invoice within 30 days of completion of the repair to Damage to Government Property, the Contractor may no longer be entitled to reimbursement for the cost of materials that exceed \$1,500.00 from the Province pursuant to Section 14.1.

Damage to Government Property Claim

- 14.3 The Contractor must submit to the Province a Damage to Government Property Claim for all Damage to Government Property. The Damage to Government Property Claim must include all costs incurred by the Contractor and the Province to repair the damage and must be accompanied by supporting documentation.
- 14.4 For certainty:
- (a) the locations identified under the heading "Service Description" in Table B on the Ministry website at http://www.th.gov.bc.ca/bchighways/contracts/electrical/SA_@@.htm will be used to determine and describe the location;
 - (b) Subcontractors are not considered third parties for this purpose; and
 - (c) a Damage to Government Property claim is not applicable to instances of Stolen Wire.

- 14.5 When the Province has made a successful Damage to Government Property Claim and has recovered an amount against a third party (insurer or the responsible party) for damage to Inventory or other Government Property (the "Recovered Amount"), and where that damage was repaired or replaced by the Contractor as part of Routine Maintenance Services, the Province will give the Recovered Amount to the Contractor minus all reasonable expenses incurred by the Province in making the Damage to Property Claim. In no event will the Province reimburse the Contractor an amount in excess of that net Recovered Amount, and in the event the Province (whether by its own forces or by its contractor) also performed some of the repair or replacement, the Province may also allocate the net Recovered Amount proportionately between itself and the

Contractor, based on the expenses incurred by each party to repair or restore the Inventory or other Government Property. This Section 14.5 will survive the expiry or termination of this Agreement.

- 14.6 The Contractor will not make or purport to make on its own behalf or on behalf of the Province any Damage to Government Property Claim whatsoever for damage to Inventory or other Government Property except to claim to the Province for the Recovered Amount under the terms and conditions of Section 14.5, and the Contractor hereby assigns to the Province all of its rights to make a Claim with respect to damage to Inventory or other Government Property. The Contractor agrees that the decision to make a Claim and all decisions respecting the conduct of a Claim will be within the Province's sole discretion.
- 14.7 The Contractor will co-operate with the Province and its legal counsel and professional advisors in any and all investigations, settlements and judicial determinations of any Claims made against the Province or the Contractor and any Damage to Government Property Claims relating directly or indirectly to this Agreement and will cause the Subcontractors to be similarly bound.

15. STOLEN WIRE

- 15.1 If the cost of work associated with the replacement of Stolen Wire and Hardening is less than \$@@.00 for the First Contract Year and \$@@.00 for each subsequent Contract Year (the "Wire Theft Cap"), then the work is part of Routine Maintenance Services and will be carried out by the Contractor without additional compensation. The value of this work below the Wire Theft Cap is calculated pursuant to the Unit Prices in Schedule 8 ("Additional Services").
- 15.2 If the cost of work associated with the replacement of Stolen Wire and Hardening is equal to or greater than the Wire Theft Cap for that Contract Year, the Province will elect either to:
- (a) whether by its own forces or by another contractor, perform the work, with this election being made on a case by case basis and for each incident of Stolen Wire in that Contract Year; or
 - (b) have the Contractor replace the Stolen Wire and perform Hardening.
- 15.3 If the Province elects the Contractor to do the work exceeding the Wire Theft Cap, the Province will pay the Contractor for the replacement of Stolen Wire and Hardening in accordance with the Unit Prices in Schedule 8 ("Additional Services").
- 15.4 At the Province's discretion, in the event the Contractor fails to submit a claim for reimbursement within 30 days of completion of this work to replace the Stolen Wire and perform Hardening pursuant to Section 15.2(b), the Contractor may no longer be entitled to reimbursement from the Province pursuant to Section 15.3 and if the Wire Theft Cap is reached part way through a particular month, then the Contractor will include that information in its monthly written report and provide supporting invoices for that portion of the work that exceed the Wire Theft Cap.
- 15.5 In the event this Agreement is renewed for a further @@ Contract Years, the Province will apply the cumulative Price Adjustment Factor in Schedule 7 ("Annual Adjustment Process") to that \$@@ sum and that value will become the new Wire Theft Cap. Except for mathematical error by the Province in applying the cumulative Price Adjustment Factor, the Contractor cannot dispute the amendment of the new Wire Theft Cap and the Parties hereto will be bound to the amendment.

- 15.6 All incidents of Stolen Wire must be reported to the police by the Contractor.
- 15.7 The Contractor will keep accurate and up to date accounts on its replacement of Stolen Wire and Hardening and will provide that information to the Province in its monthly reports along with supporting invoices, when applicable. (The locations identified under the heading "Service Description" in Table B on the Ministry website at http://www.th.gov.bc.ca/bchighways/contracts/electrical/SA_@@.htm will be used to determine and describe the locations for the purposes of reporting and payment.)
- 15.8 For certainty, Subcontractors are not considered third parties for this purpose and this Article 15 is not applicable to Damage to Government Property.

16. ELECTRICAL PERMITS

- 16.1 Any cost increases over and above the amount of \$2,000.00 per Contract Year in the fees charged to the Contractor for obtaining annual electrical permit(s) for performing the Services within the Electrical Service Area will be reimbursed to the Contractor by the Province. In the event the Contractor determines that such fees are likely to exceed \$2,000.00, then the Contractor will notify the Ministry before incurring such fees to provide the Ministry with an opportunity of addressing the matter with the appropriate regulatory authority before the fees are incurred by the Contractor.

17. ASSIGNMENT, SUBCONTRACTING

- 17.1 The Contractor will not without the prior written consent of the Province assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement and the Contractor will reimburse the Province forthwith on demand the Province's administrative and other costs, including legal costs, in respect of the assignment of this Agreement.
- 17.2 The following events will be deemed to be an assignment of the Contractor's rights and obligations under this Agreement:
- (a) if the Contractor is a corporation but none of its shares are traded on any public stock exchange or in any public stock market, any transaction, amalgamation, arrangement, reorganization, joint venture, trust or other agreement which will result in a direct or indirect change of control of such corporation or direct or indirect change of ownership of the business during the Term; or
 - (b) if the Contractor is a partnership, the cessation, other than through death, at any time during the Term by any person who at the time of the execution of this Agreement owns a partner's interest, or such ownership, or a material change in the ownership, in the opinion of the Province, of such partner's interest.
- 17.3 The Province may, in its sole discretion, assign this Agreement or any right or obligation under this Agreement to any corporation or agency of the Province of British Columbia and, with the prior written consent of the Contractor to any other person provided that such corporation or agency of the Province of British Columbia or other person agrees in writing to be bound by the terms of this Agreement and perform all obligations of the Province under this Agreement prior to such assignment taking place. The Province will promptly notify the Contractor of any such assignment and provide a copy of the written agreement of the assignee confirming that it is bound by the terms of, and will perform all of the obligations of the Province under this Agreement.

- 17.4 The Contractor may subcontract any obligation of the Contractor under this Agreement to any person except if the Province has notified the Contractor that the Province's written consent is to be obtained prior to any such subcontracting by the Contractor.
- 17.5 The appointment of Subcontractors by the Contractor will not relieve the Contractor of its responsibility to perform and comply with all terms of this Agreement, or for the quality of work, materials and services provided by it.
- 17.6 The Contractor will at all times be held fully responsible to the Province for the acts and omissions of its Subcontractors, Controlled Persons and persons employed by them and no subcontract entered into by the Contractor will impose any obligation or liability upon the Province to any such Subcontractor, Controlled Person or any of its employees.
- 17.7 The Contractor will cause every Controlled Person and Subcontractor to be bound by the terms of this Agreement so far as they apply to the Services to be performed by each Subcontractor.
- 17.8 Nothing in this Agreement will create any contractual relationship between the Province and a Subcontractor or Controlled Person of the Contractor.
- 17.9 The Contractor will use its best efforts to co-operate with the Province, and any other interested parties to effect a full or partial assignment of the Province's rights and obligations under this Agreement, and a reasonable transition in performance of the Services as a result of any assignment, expiration or termination of this Agreement and this obligation will survive such expiration, termination or assignment.

18. RECORDS AND REPORTS

- 18.1 The Contractor will:
- (a) establish and maintain at a location within British Columbia accurate books of account and records (including supporting documents) to the satisfaction of the Province;
 - (b) give written particulars of the location within British Columbia, referred to in Section 18.1(a), to the Province, not later than 30 days after the Commencement Date, or give written particulars of any new location within British Columbia within 30 days of any change of location;
 - (c) permit the Province, its employees, servants, contractors and agents, at any time or times during normal business hours, to copy or audit, or both, any or all of the books of account and records (including supporting documents) referred to in Section 18.1(a);
 - (d) establish, maintain and comply with a work reporting system (including a computerized maintenance management system) satisfactory to the Province; and
 - (e) maintain the Inventory list in the Excel spreadsheet format that is initially provided to the Contractor by the Province prior to the Commencement Date of this Agreement. The Contractor will verify that the spreadsheet is correct and will be responsible for updating the spreadsheet when Inventory increases or decreases as appropriate.

18.2 No later than the 10th Working Day following the preceding month, the Contractor will submit monthly written reports to the Province on the scheduled and the completed Services (unless otherwise identified in this Section 18.2) for the Contractor's activities as follows:

- (a) work identified, scheduled and completed by the Contractor in connection with provision of the Routine Maintenance Services including work activity for each specification of the Specifications in Schedule 1 ("Specifications") and Local Area Specifications in Schedule 2 ("Local Area Specifications") for Routine Maintenance Services;
- (b) written summaries of Additional Services which include scheduled and performed Additional Services itemized according to the Work Order as appropriate and pursuant to Schedule 8 ("Additional Services") and identified as to work location (highway #, intersection location);
- (c) a statement of account for:
 - (i) the replacement of all LED signal head light replacements, below and exceeding the Cap. Details should include date, location, specific signal head and colour of LED;
 - (ii) the cost of the materials for Damage to Government Property exceeding \$1,500.00 per incident;
 - (iii) the cost of replacement of Stolen Wire and Hardening, below and exceeding the Wire Theft Cap. Details should include incident description, date, location and scope of repair;
 - (iv) the fees for annual electrical permits exceeding \$2,000 per Contract Year; and
 - (v) the cost and details for the collection of the controller volume and measure of effectiveness (MOE) logs that is:
 - (A) included as Routine Maintenance Services pursuant to Specification E-110 Section 2.1(l) of Schedule 1 ("Specifications"); and
 - (B) included as Guaranteed Additional Services when the 60% threshold of the pedestrian and traffic signal Inventory total per year is exceeded pursuant to Section 1.1(d)(iii) of Schedule 8 ("Additional Services");
- (d) an updated Inventory list referenced in Section 18.1(e) above;
- (e) an updated summary of Damage to Government Property Claims; and
- (f) Work Plan progress.

18.3 The Contractor will, no later than the 30th Working Day after the Anniversary Date, provide to the Province a summary of the prior Contract Year that will include:

- (a) all matters referenced in Section 18.2;

- (b) a report of all railway pre-emption and railway advance warning sign systems as jointly tested and inspected with the applicable railway authority;
 - (c) a summary of warranty work and items replaced under warranty (including such items as LED signal head light sources, UPS units and batteries, electronic message signs and equipment);
 - (d) an updated Provincial Material list; and
 - (e) a certificate of a senior officer or director of the Contractor certifying that the Contractor's details provided in Schedule 18 ("Contractor Details") is unchanged or provide a certified replacement for Schedule 18 ("Contractor Details").
- 18.4** The Contractor will, on or before the Anniversary Date of each Contract Year, provide to the Province:
- (a) the completed Inventory Change Detail form attached as Appendix 4 to Schedule 7 ("Annual Adjustment Process"); and
 - (b) the completed Insurance Premium Adjustment Form attached as Appendix 5 to Schedule 7 ("Annual Adjustment Process"), as originally signed by an authorized representative of the Insurer, on or before the Anniversary Date of each Contract Year, in respect of the commercial general liability insurance described in Article 10 (excluding any Sudden and Accidental pollution liability coverage), of the total amount payable, as the annual premium to maintain such renewal or replacement insurance in force for the duration of the subsequent Contract Year.
- 18.5** The Contractor will from time to time and such time(s) the Province may specify (unless otherwise identified in this Section 18.5):
- (a) deliver to the Province as required by the Province any or all records and reports demonstrating or relating to the compliance of the Contractor with the laws, by-laws, orders, directions, rules and regulations referenced in Section 12.1(a); and
 - (b) allow the Province full access to the records related to the Quality Plan.
- 18.6** The Contractor will promptly return or provide to the Province at the expiry or the earlier termination of this Agreement without the need for the Province to make the request, all complete and accurate documentation including but not limited to reports/documents on the following items and matters in the appropriate Microsoft Office, Excel or Adobe Acrobat standard, including:
- (a) a summary report of all Damage to Government Property Claims for reimbursement made by the Contractor in Section 14.3 for the Term;
 - (b) all traffic signal record (the "TSR") forms;
 - (c) the conflict monitor testing schedule;
 - (d) the UPS testing schedule;

- (e) the UPS testing results;
- (f) the re-lamp schedule for all high intensity discharge lighting;
- (g) the most current joint Contractor/railway authority joint testing and inspection reports;
- (h) traffic controller programming data;
- (i) an updated Inventory spreadsheet;
- (j) any and all manuals, findings, data, specifications, drawings, working papers, reports, documents and other materials whether complete or incomplete that have been prepared by the Contractor; and
- (k) an updated Provincial Material list.

18.7 All reports, summaries and documents provided by or on behalf of the Contractor pursuant to Sections 18.1(e), 18.3, 18.4(a) and 18.6 to the Province and will remain the exclusive property of the Province. The Province may at any time and from time to time use any and all such reports including without limitation all or any part of the information contained in such reports for any purpose whatsoever as the Province in its sole discretion may determine. This provision will survive the expiration or earlier termination of this Agreement.

19. FINANCIAL AUDIT

19.1 The Province may, in its sole discretion, conduct a financial and accounting audit of the Contractor, including the right to inspect and take copies of the books and records of the Contractor upon reasonable notice and at reasonable times.

19.2 The Contractor will fully co-operate with the Province in conducting an audit under this Article 19.

19.3 The Contractor will, upon the request of the Province, provide to the Province a copy of the audited (or if unavailable, unaudited) financial statements of the Contractor.

19.4 The Contractor will prepare such financial information, reports or statements relating to the Contractor's financial condition and accounting records as the Province may request and will deliver the same to the Province at such time(s) as the Province may specify.

20. QUALITY

20.1 The Contractor is responsible for the quality of the Services in accordance with this Agreement, the Specifications and the Contractor's Quality Plan.

20.2 The Contractor will prepare the Contractor's Quality Plan for the Services in accordance with the criteria set forth in Section 20.9 and provide the Contractor's Quality Plan to the Ministry Representative.

20.3 The Contractor must have the Ministry Representative's written acceptance of the Contractor's Quality Plan no less than 30 days after the Commencement Date of this Agreement. Acceptance of the Contractor's Quality Plan by the Province in no way will release the Contractor from its obligation to perform all of the terms, covenants and conditions of this Agreement, including but not

limited to the Specifications, all of which are expressly reserved by the Province and that if there is any conflict between the Contractor's Quality Plan, or any part thereof, and any term of this Agreement including the Specifications, the terms of this Agreement will prevail.

- 20.4 The Contractor will implement, maintain and conform to the Contractor's Quality Plan through the Term.
- 20.5 The Contractor is responsible for continually monitoring the effectiveness of, maintaining, and revising the Contractor's Quality Plan throughout the Term and will submit any resulting amendments to the Ministry Representative for acceptance.
- 20.6 The Contractor will assign the responsibility of implementing the Contractor's Quality Plan to one person who has the competency and proven capability, and who will work directly with the Ministry Representative on matters related to quality and will fully co-operate in all of the Province's monitoring and auditing activities as described in the Provincial Quality Plan.
- 20.7 The Province may audit the Contractor's Quality Plan and conduct monitoring, auditing and performance testing, at times and in a manner determined by the Ministry Representative, in order to ensure conformance with the Specifications, the terms of this Agreement, and the Contractor's Quality Plan through review of the Contractor's work activities and performance results and to verify the effectiveness of the Contractor's processes, procedures, methods, documentation, and records.
- 20.8 The Province may issue and deliver to the Contractor a Non-Conformance Report (the "NCR") if the results of the Province's monitoring or auditing activities indicate the Contractor is failing to conform to the terms of this Agreement.
- 20.9 The Contractor's Quality Plan will require, without limitation:
- (a) the documentation of all processes for all Routine Maintenance Services in detail;
 - (b) the documentation of the Contractor's processes to ensure quality control and quality assurance;
 - (c) an internal non-conformance process to be initiated by the Contractor when materials products or Services fail to meet the terms and conditions of this Agreement that, without limitation, includes the following:
 - (i) the methods used to determine the extent, location and quantity of the non-conforming material, product or Service;
 - (ii) the methods used to resolve an incident or incidents of non-conforming materials, products or Services, whether they be replacement, rectification or a request to the Province to accept the non-conformance;
 - (iii) how the root cause leading to the non-conformance will be identified and

analyzed;

- (iv) the method or methods to ensure all similar incidents are prevented in the future;
 - (v) the method or methods used to determine the effectiveness of corrective and preventive measures; and
 - (vi) how the non-conformances and their resolution will be communicated within the Contractor's organization;
- (d) or the Contractor may request in writing to the Province that the non-conforming materials, products or Services be accepted by the Province.

21. DEFAULT AND REMEDIES

21.1 Any of the following events will constitute an Event of Default whether the event is voluntary, involuntary or results from the operation of law or any judgment or order of any court or administrative or government body:

- (a) the Contractor fails to observe, perform or comply with any provision of this Agreement;
- (b) any representation or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
- (c) any information, statement, document, certificate or report furnished or submitted by or on behalf of the Contractor to the Province pursuant to this Agreement is materially untrue or incorrect;
- (d) the Contractor fails to deliver to the Province notice that there has occurred or is continuing a default under this Agreement, and which specifies the particulars of the default;
- (e) there is any *bona fide* action or proceeding, pending or threatened against the Contractor, which would, in the reasonable opinion of the Province, have a material adverse effect upon the ability of the Contractor to fulfill its obligations under this Agreement;
- (f) an order is made, a resolution is passed or a petition is filed, for the liquidation or winding up of the Contractor;
- (g) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Contractor which, in the reasonable opinion of the Province, materially adversely affects the ability of the Contractor to fulfill any of its obligations under this Agreement;
- (h) the Contractor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (i) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy*

and Insolvency Act (Canada) is made by, the Contractor;

- (j) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act (Canada)*;
- (k) a receiver or receiver-manager of any property of the Contractor is appointed;
- (l) the Contractor permits any sum, which is not disputed to be due by it, to remain unpaid after legal proceedings have been commenced to enforce payment thereof;
- (m) the Contractor ceases, in the reasonable opinion of the Province, to carry on business as a going concern;
- (n) the Contractor, without the prior written approval of the Province, assigns, sells or in any manner disposes of or encumbers all or any of its interest in, or rights acquired under, this Agreement;
- (o) without the prior written consent of the Province, the direct or indirect legal or beneficial ownership and effective control of the Contractor changes from that represented in Schedule 18 ("Contractor Details");
- (p) any action is taken to enforce any security interest, charge or encumbrance granted, created or issued by the Contractor; and
- (q) the failure of the Contractor to comply with the requirements of Article 11.

21.2 On the happening of an Event of Default, or at any time thereafter, the Province's Regional Director may deliver written notice to the Contractor specifying the Event of Default and the Province may, at its option, elect to do any one or more of the following:

- (a) pursue any remedy available to the Province at law or in equity including any remedy available to it under the Bonds;
- (b) retain as a holdback from any payment due to the Contractor pursuant to Part 1 of Schedule 5 ("Fee");
 - (i) if the Event of Default is a failure to perform Additional Services in accordance with this Agreement, an amount equal to twice the value of that work not performed, as determined by the Province in the Province's sole discretion; or
 - (ii) if the Event of Default is a failure to perform Routine Maintenance Services in accordance with this Agreement, an amount equal to twice the value of the Routine Maintenance Services not performed, such value to be determined by the Province in the Province's sole discretion;
- (c) take all actions in its own name or in the name of the Contractor that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred will be payable by the Contractor to the Province on demand and set off against any sums owing by the Province to the Contractor, present or future, including any amount retained as a holdback under this Article;

- (d) require the Contractor to cure the Event of Default within a time period specified in the notice;
- (e) if an Event of Default with respect to which an amount has been retained as a holdback under this Article 21;
 - (i) has been cured by the Contractor to the satisfaction of the Province within a time period specified by the Province, then the Province may pay the amount retained to the Contractor; or
 - (ii) is not curable or has not been cured by the Contractor to the satisfaction of the Province within a time period specified by the Province then the Province may keep the amount retained as a reduction of fees otherwise payable to the Contractor; and
 - (iii) services not supplied, as determined according to this Section 21.2 and Schedule 5 ("Fee") or Schedule 8 ("Additional Services"), as the case may be, is an appropriate estimate of the losses and damages incurred by the Province arising from the Contractor's default, after taking into account, without limitation, the Province's increased administration costs, the costs of hiring an alternate Contractor to perform the Additional Services or Routine Maintenance Services, the delays in the performance of those Services and the costs associated with traffic closures or delays, if any, which resulted from the Event of Default;
- (f) waive the Event of Default;
- (g) terminate this Agreement, subject to the expiration of any time period specified by Section 21.2 (d); and
- (h) if the Event of Default is as described in Section 21.1(q) terminate this Agreement effective on the fourth Anniversary Date with respect to the failure of the Contractor to satisfy the requirements of Sections 11.3 and 11.4 and pursue the remedy provided for in the Bonds without a requirement by the Province to provide any notice.

21.3 The rights, powers and remedies conferred on the Province under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, any other agreement, at law or in equity and the exercise by the Province of any right, power or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

21.4 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure to act will continue, will constitute a waiver by such party of its rights under this Agreement.

21.5 No interest will be payable by the Province on any amount retained as a holdback in accordance with this Article and Schedule 5 ("Fee") and or Schedule 8 ("Additional Services").

22. DISPUTE RESOLUTION

- 22.1** Upon a dispute arising out of or in connection with any provision of this Agreement, either party may invoke the Dispute Resolution Protocol in Schedule 10 ("Dispute Resolution Protocol") by written notice to the other in order to attempt to resolve the dispute.
- 22.2** The parties will confirm in writing any election by them to follow the Dispute Resolution Protocol in respect of a particular dispute and upon any such election being made, unless otherwise agreed by the parties, the Dispute Resolution Protocol will be binding on them in respect of that dispute.

23. FORCE MAJEURE

- 23.1** If an event of Force Majeure is likely to occur, the party directly affected will notify the other party immediately, and will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay performance of its duties, covenants and obligations under this Agreement.
- 23.2** If an event of Force Majeure does occur and if the party directly affected by the event of Force Majeure is the Contractor, then:
- (a)** the Province will not be obliged to pay to the Contractor any amount during the period of Force Majeure, nor will any payment obligation accrue for that period. Notwithstanding the foregoing, the Province will pay the Contractor for those items of Routine Maintenance Services that were performed in accordance with (b) below, although in no circumstances will payment for those items performed ever be more than the equal monthly installments pursuant to Schedule 5 ("Fee");
 - (b)** during the time period while the event of Force Majeure continues the Province will pay monthly fees to the Contractor for the direct costs incurred by the Contractor (excluding overhead costs) in performing items of Routine Maintenance Services calculated in accordance with Schedule 8 ("Additional Services"), such fees to be paid in arrears on the payment dates set out in Schedule 5 ("Fee") provided that the Contractor submits its written statement of account in respect of the fees claimed, including supporting invoices evidencing the Contractor's direct costs; and
 - (c)** during the event of Force Majeure, and subject to Schedule 8 ("Additional Services") Section 3.4, the Contractor will not be required to perform Additional Services, unless the Province or a Government Authority deems it to be an essential service.
- 23.3** If either party is aware or is made aware, through its dealings with the insurance industry or the electrical maintenance services industry, that an event of Force Majeure is likely to occur then that party will notify the other party and both parties will enter into good faith negotiations with a view to entering into a mutually acceptable agreement that will prevent the event of Force Majeure from occurring.
- 23.4** If either party is aware or is made aware, through its dealings with the insurance industry or the electrical maintenance services industry, that an event of Force Majeure described in Section 1.1 has occurred, then that party will notify the other party immediately.
- 23.5** If the party giving notice under Section 23.1 and 23.4 is the Contractor, then the Province will as

soon as reasonably practicable, notify the Contractor whether or not the Province is satisfied, in the Province's sole discretion, that the matter described in the notice constitutes an event of Force Majeure described in Section 1.1, and the Province's notice will be final and binding.

23.6 If the party giving notice under Sections 23.1 and 23.4 is the Province, or if the Province has notified the Contractor under Section 23.4 that the matter described in the Contractor's notice constitutes an event of Force Majeure described in Section 1.1, then the Contractor will enter into good faith negotiations with the Province with a view to resolve the event of Force Majeure and to resume, with the least possible delay, the performance of this Agreement, and notwithstanding the provisions of Section 23.2(b), the Province will not be obliged to make any payments to the Contractor in connection with this Agreement during the period that such event of Force Majeure is continuing.

24. NOTICES

24.1 Any notices hereunder will be in writing and may be given or made by personal delivery, email or courier to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed:

(a) if to the Province:

Ministry of Transportation and Infrastructure

@@Address

Email Address: @@

Attention: @@

(b) and if to the Contractor:

@@Company Name

@@Address

Email Address: @@

Attention: @@

or such other contact and address as may be notified in writing by either party to the other from time to time during the Term;

and any such notice if e-mailed is deemed to have been given, made and received when the e-mail is capable of being retrieved by the addressee, and if mailed in Canada is deemed given to and received by the addressee on the third Working Day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

25. MISCELLANEOUS

25.1 Any public announcement relating to this Agreement will be arranged by the Province in consultation with the Contractor.

25.2 The Contractor will treat as confidential and will not, without the prior written consent of the

Province, publish, release, or disclose, or permit to be published, released or disclosed either before or after the expiration or sooner termination of this Agreement, any information, supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement, except insofar as such publication, release or disclosure is required by law or is necessary to enable the Contractor to fulfill the obligations of the Contractor under this Agreement.

- 25.3 The Contractor will not, during the Term, perform a service for or provide advice to any person, firm or corporation or other legal entity where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of the Contractor to the Province under this Agreement and the obligations of the Contractor to such other person, firm or corporation or other legal entity.
- 25.4 This Agreement constitutes the entire agreement between the parties in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement. The Contractor agrees that in entering into this Agreement the Contractor has not and does not rely upon any previous representation of the Province, or of servants, employees, agents, or representatives of the Province, whether expressed or implied, or upon any inducement or agreement of any kind or nature. All prior understandings, negotiations, representations, contracts or agreements are hereby canceled.
- 25.5 Upon the request of the other, each party will make, do, execute or deliver to each other any other reasonable documents, instruments and assurances and do any other reasonable acts required to carry out the true intent and meaning of this Agreement.
- 25.6 Neither the Province nor the Contractor will take advantage of any apparent discrepancy, ambiguity, error, or omission in this Agreement and will notify the other party forthwith following the detection of anything it suspects may be an ambiguity, discrepancy, error, or omission.
- 25.7 Public disclosure of this Agreement and any documents or other records pertaining to this Agreement or those agreements which are in the custody or under the control of the Province, will be governed by the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165.
- 25.8 Time will be of the essence of this Agreement.
- 25.9 All provisions of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, will survive the expiration or sooner termination of this Agreement.
- 25.10 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and Contractor and its successors and permitted assigns.
- 25.11 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.
- 25.12 If any provision of this Agreement or the application thereof to any person or circumstance is invalid

or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

25.13 This Agreement may only be amended by a further written agreement executed by both parties.

25.14 The Contractor will use its best efforts to adopt electronic modes of communication and transfer of information in formats and through modes of communication specified by the Province.

26. INTERPRETATION

26.1 A reference in this Agreement:

(a) to a statute whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefore or in replacement thereof; and

(b) to any other agreement between the parties means that other agreement as it may be amended from time to time by the parties.

26.2 Unless the context otherwise requires, any reference to "this Agreement" means this instrument, all of the Schedules attached to it and all documents, manuals or publications referenced in the Schedules and any reference in this Agreement to any article, section, subsection or paragraph by number is a reference to the appropriate article, section, subsection or paragraph in this Agreement.

26.3 The headings or captions in this Agreement are inserted for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

26.4 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it will be construed as the singular or masculine, as the case may be, had been used where the context or the parties so require.

26.5 Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

26.6 For the purposes of this Agreement, the "Contract Documents" will consist of the following documents:

(a) the Agreement (including but not limited to the Specifications); and

(b) the particular provisions of any manuals, drawings and publications referred to in the Agreement.

26.7 Conflicts among provisions to this Agreement will be resolved as follows:

- (a) A provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a Schedule, unless that conflicting provision expressly states otherwise;
- (b) A provision in a Schedule will prevail over any conflicting provision in an Appendix, another document attached to, or incorporated by reference into a Schedule, unless the schedule expressly states otherwise; and
- (c) A provision found elsewhere in this Agreement will prevail over a provision identified or entitled as a "Plan" or "Drawing".

26.8 In this Agreement, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

26.9 All dollar amounts expressed in this Agreement refer to lawful currency of Canada, exclusive of GST and inclusive of all other applicable taxes, duties and other charges.

26.10 This Agreement will be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia and the courts of competent jurisdiction within the province of British Columbia, will have exclusive jurisdiction with respect to any legal proceedings between the Province and the Contractor arising out of this Agreement.

26.11 The Schedules that will form an integral part of this Agreement and are attached hereto, are as follows:

| | |
|-------------|---|
| Schedule 1 | Specifications |
| Schedule 2 | Local Area Specifications |
| Schedule 3 | Electrical Service Area (Map Reference) |
| Schedule 4 | Inventory |
| Schedule 5 | Fee |
| Schedule 6 | Cost for Changes to Inventory |
| Schedule 7 | Annual Adjustment Process |
| Schedule 8 | Additional Services |
| Schedule 9 | Prime Contractor Designation |
| Schedule 10 | Dispute Resolution Protocol |
| Schedule 11 | Equipment Fleet Operations Policy |
| Schedule 12 | Repeater System |
| Schedule 13 | Provincial Material List |
| Schedule 14 | Bonds |
| Schedule 15 | Insurance |
| Schedule 16 | Insurance & Securities (Renewal Term) |
| Schedule 17 | Privacy Protection |
| Schedule 18 | Contractor Details |

