

PAVEMENT MARKING SERVICE AGREEMENT– ROUND 3

@SA Name@ PAVEMENT MARKING SERVICE AREA

THIS AGREEMENT dated for reference the @@ day of @@, 20@@ and numbered PMSA-SA@@-R3

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure

(the “**Province**”)

AND:

@Contractor Name@, a body corporate amalgamated under the laws of Canada under Certificate of Amalgamation No. @@ and extra-provincially registered in British Columbia under Certificate of Registration No. @@ and having its registered office at @Address@

(the “**Contractor**”)

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(the “**Contractor**”)

WHEREAS:

- A.** The Province has agreed to appoint and retain the Contractor to provide certain Pavement Marking Services; and
- B.** the Contractor has agreed to provide the services for the Province on the terms of this Agreement.

NOW THEREFORE in consideration of the premises and the covenants, agreements, representations, warranties and payments contained in this agreement the parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

- (a) “**Act**” means the *Transportation Act*, S.B.C. 2004, c.44; except in Schedule 13 (Privacy Protection) where it will have the meaning assigned to it in Schedule 13.
- (b) “**Accomplishment Report**” means the report made in accordance with the requirements set out in subsection 14.4 (e), which must be produced using the form located on the Ministry Website;
- (c) “**Additional Pavement Marking Services**” means those services described in subsection 5.2(c), and includes Assured Additional Pavement Marking Services and Other Additional Pavement Marking Services as defined in Schedule 5 (Additional Pavement Marking Services);
- (d) “**Additional Pavement Marking Services Unit Prices**” means those prices, applicable to a particular Contract Year, allocated to specific categories of work activities included within Additional Pavement Marking Services and described in Schedule 5 (Additional Pavement Marking Services)
- (e) “**Adjusted Annual Price**” means the sum payable by the Province to the Contractor in consideration for the provision of Core Services during a Contract Year subsequent to the first Contract Year, as calculated in accordance with Schedule 9 (Annual Adjustment Process);
- (f) “**Agreement**” means this Agreement, entitled “Pavement Marking Service Agreement - Round 3”;
- (g) “**Anniversary Date**” means, in the first year of the Term, the date which is one year after the Commencement Date and thereafter, in each successive year of the Term, the date which is one year after the previous Anniversary Date;
- (h) “**Annual Adjustment Process**” means the annual adjustment process described in Schedule 9 (Annual Adjustment Process);
- (i) “**Annual Price**” means the Base Annual Price or the Adjusted Annual Price, as the case may be, applicable to a particular Contract Year;
- (j) “**Base Annual Price**” means the sum of \$@@ payable by the Province to the Contractor in consideration for the provision of Core Services during the first Contract Year;

- (k) **“Bonds”** means the performance bond and labour and material payment bond in the format and containing the terms specified in Schedule 15 (Bonds), and includes any additional or replacement bond and any agreement extending or amending any Bond;
- (l) **“Business Day”** means a working day and excludes Saturday, Sunday, statutory holidays, or a day on which the Provincial government’s offices are closed in British Columbia;
- (m) **“Category 1 Inventory”** and **“Category 2 Inventory”** means the categories of Routine Line Inventory described in Schedule 4 (Routine and Quantified Pavement Marking Services);
- (n) **“Commencement Date”** means @December 16, 2013;
- (o) **“Contract Year”** means a period during the Term which commences on and includes:
 - (i) the Commencement Date and ends on but excludes the first Anniversary Date,
 - (ii) each succeeding Anniversary Date and ends on but excludes the next following Anniversary Date, or
 - (iii) the fourth Anniversary Date and ends on and includes the Expiry Date;
- (p) **“Contractor”** means @Contractor Name@;
- (q) **“Contractor’s Proposal”** means the proposal submitted by the Contractor in response to the RFP;
- (r) **“Contractor’s Quality Plan”** means a detailed document, developed by the Contractor in accordance with Article 16, that sets forth the procedures and sequence of activities aimed at translating the Contractor’s quality policy into operational results in the delivery of the Pavement Marking Services;
- (s) **“Core Services”** means the Routine Pavement Marking Services and Quantified Pavement Marking Services and all work associated with these services, and includes, without limitation, the preparation and implementation of all plans required pursuant to the terms of this Agreement and the development, compilation and delivery to the Ministry of all reports required pursuant to the terms of this Agreement;

- (t) **“DPMMI”** means the Digital Pavement Marking Measuring Instrument described in Part B of Schedule 1 (Pavement Marking Specifications);
- (u) **“Dispute Resolution Protocol”** means the dispute resolution protocol attached as Schedule 10 (Dispute Resolution Protocol);
- (v) **“Event of Default”** means any event described in section 17.1;
- (w) **“Expiry Date”** means @December 15, 2018;
- (x) **“Extension of Time”** means an extension of time to complete the work corresponding with the applicable Milestone Date, pursuant to Schedule 6 (Milestone Dates & Consideration Charges);
- (y) **“Force Majeure”** means
 - (i) acts of God, wars (declared or undeclared), revolutions, riots, insurrections, lockouts, or strikes, 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 19.2, the failure by the Contractor to obtain or maintain in force comprehensive general liability insurance as described in Article 9, 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 9;
 - (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.

- (z) **“Highways”** means all highways, as defined in the Act, under the administration of the Minister, or highways that are by arrangement maintained by the Province, and includes any highways described in Schedule 4 (Routine and Quantified Pavement Marking Services);
- (aa) **“Inventory Adjustment Unit Price”** has the meaning given to that term in Schedule 8 (Cost for Changes to Line Inventory);
- (bb) **“Line Condition Report”** means a report made in accordance with the requirements set out in subsection 14.4(b), which must be produced using the form located on the Ministry Website;
- (cc) **“Line Type Report”** means a report made in accordance with the requirements set out in subsection 14.4(h), which must be produced using the form located on the Ministry Website;
- (dd) **“Line Kilometre”** means one kilometre of any line type illustrated in figure 7.1 of the Manual of Standard Traffic Signs and Pavement Markings;
- (dd-1) **“LKI”** means Landmark Kilometre Inventory;
- (ee) **“Longitudinal Markings”** means any longitudinal marking as described in figure 7.1, Longitudinal Markings, in the Manual of Standard Traffic Signs and Pavement Markings;
- (ff) **“Milestone Date”** means any date specified in Schedule 6 (Milestone Dates & Consideration Charges) for completion of the specific portion of the work that corresponds to that date;
- (gg) **“Minister”** means the member of the Executive Council of the Province who is charged with the administration of the Act and includes the Minister's deputy and any person authorized to act for or on behalf of either of them with respect to any matter under this Agreement;
- (hh) **“Ministry”** means the Ministry of Transportation and Infrastructure or any successor ministry thereto headed by the Minister;
- (ii) **“Ministry Representative”** means the person designated as such by the Ministry;
- (jj) **“Ministry Website”** means
- (kk) **“Non-Conformance Report”** means a report issued in writing by either the Ministry Representative or the Contractor that documents the

Contractor's failure to comply with the terms of this Agreement and fulfill the Contractor's obligations under this Agreement;

- (ll) **"OHS Regulation"** means the British Columbia Regulation 296/97 entitled "Occupational Health and Safety Regulation";
- (mm) **"Operational Day"** means any day on which the Contractor is applying pavement markings;
- (nn) **"Pavement Marking Service Area"** means the area described in Schedule 3 (Pavement Marking Service Area);
- (oo) **"Pavement Marking Services"** means the provision of all labour, materials and equipment for the purpose of providing the Pavement Marking Services described as such in the Pavement Marking Specifications in Schedule 1, as those Pavement Marking Services may be changed from time to time in accordance with Article 7 and includes Routine Pavement Marking Services, Quantified Pavement Marking Services and Additional Pavement Marking Services;
- (pp) **"Pavement Marking Specifications"** means collectively those specifications in Schedule 1 (Pavement Marking Specifications), and those specifications in Schedule 2 (Local Area Specifications), as such specifications may be amended by the Province from time to time by written notice to the Contractor;
- (qq) **"Plate Test"** means a test, performed, for the purpose of measuring the wet mil thickness of paint (unbeaded) application. The Contractor will be required to paint across a steel plate of approximately 12"x18" in size that has been placed on the roadway. Where appropriate, at the discretion of the Province, this test may also be used in conjunction with DPMMI data;
- (rr) **"Prime Contractor"** means the prime contractor for a workplace within the meaning of section 118 of the *Workers Compensation Act*;
- (ss) **"Province"** means Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure;
- (tt) **"Provincial Quality Plan"** means the Pavement Marking Quality Plan Manual available on the Ministry Website;
- (uu) **"Quality Assurance"** means the process of evaluating overall product or service, and a means of confirming Quality Control results;

- (vv) **“Quality Control”** means the process of checking specific product or service results to determine if they conform with relevant quality standards and identifying ways to eliminate cases of unsatisfactory product or service performance;
- (ww) **“Quantified Line Inventory”** means pavement markings identified within the Pavement Marking Service Area to be painted on a cyclical basis as described in Schedule 4 (Routine and Quantified Pavement Marking Services);
- (xx) **“Quantified Pavement Marking Services”** means those services described in subsection 5.2(b);
- (yy) **“Quantified Plan”** means an annual plan made in accordance with the requirements set out in subsection 14.4(c);
- (zz) **“Repeater System”** has the meaning given to that term in Schedule 12 (Repeater System);
- (aaa) **“RFP”** means the request for proposals entitled **PMSA-SA@@-R3** issued by the Province in 2013 in connection with the @SA Name@ Pavement Marking Service Area;
- (bbb) **“Routine Line Inventory”** means pavement markings identified within the Pavement Marking Service Area to be painted on an annual basis as described in Schedule 4 (Routine and Quantified Pavement Marking Services);
- (ccc) **“Routine Pavement Marking Services”** means those services described in subsection 5.2(a);
- (ddd) **“Safety Program”** means an occupational health and safety program initiated and maintained in accordance with the requirements set out in subsection 11.1(s);
- (eee) **“Season”** means the period from @Date@ to @Date@ (both dates inclusive) in each year;
- (fff) **“Subcontractors”** means subcontractors at arm’s length to the Contractor, determined to the satisfaction of the Minister in the Minister's sole discretion, having a direct contract with the Contractor to provide labour or labour and equipment (other than hired equipment on an all found or bare rental basis) to perform Pavement Marking Services but does not include dependent contractors as defined in the *Labour Relations Code*, R.S.B.C. 1996, c.244 unless specifically approved by the Minister;

(ggg) “**Term**” means the term of this Agreement described in Article 3; and

(hhh) “**Work Plan**” means the plan as outlined in subsection 14.4 (d).

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)** it is a corporation duly organized and validly existing under the laws of British Columbia, under the *Business Corporations Act* (Canada) or under the laws of any other province or state in which case it is registered extra-provincially in British Columbia;
- (b)** it is in good standing with respect to the filing of annual reports according to the records of the Office of the Registrar of Companies of British Columbia;
- (c)** it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
- (d)** all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Contractor;
- (e)** 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;
- (f)** this Agreement has been duly authorized by all necessary corporate action of the Contractor;
- (g)** all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement are true and correct;
- (h)** it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;

- (i)** the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it of or a default by it under:

 - (i)** any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on it,
 - (ii)** its constating documents, or
 - (iii)** any contract or agreement to which it is a party;
- (j)** the authorized capital of the Contractor, if applicable, is as disclosed in Schedule 14 (Contractor Detail);
- (k)** 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 14 (Contractor Detail);
- (l)** 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 14 (Contractor Detail);
- (m)** it has good safekeeping, marketable title to and possession of all its assets, free and clear of all liens, charges or encumbrances except those disclosed in Schedule 14 (Contractor Detail);
- (n)** it is not a party to, or threatened with, any litigation and has no knowledge of any claims against it that would materially affect its undertaking or financial condition;
- (o)** there are no liabilities of the Contractor, contingent or otherwise, that are not disclosed or reflected in Schedule 14 (Contractor Detail) herein except those incurred in the ordinary course of its business;
- (p)** 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 14 (Contractor Detail);
- (q)** if the Contractor is a partnership and if any of the partners of the partnership are corporate entities, then

 - (i)** Schedule 14 (Contractor Detail) 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 that is a corporation are true for each corporate partner;
- (r) it 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 it 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;
- (s) it is not in breach of any statute, regulation or bylaw applicable to the Contractor or its operations;
- (t) it 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;
- (u) 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;
- (v) it 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;
- (w) it has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform the Pavement Marking Services;
- (x) it has independently reviewed all labour relations issues related to the performance of the Contractor's obligations under this Agreement; and
- (y) it has received from the Province and reviewed the Pavement Marking Specifications.

- 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 and 2.2 will continue in full force and effect notwithstanding the fulfillment by the Contractor of any or all of its obligations under this Agreement or the payment by the Province to the Contractor of any or all of the monies that the Province becomes liable to pay to the Contractor pursuant to this Agreement.

3. APPOINTMENT AND TERM

- 3.1** The Province retains the Contractor to provide the Pavement Marking Services in accordance with the terms of this Agreement.
- 3.2** The Contractor will provide the Pavement Marking Services 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 17 or any other termination provisions of this Agreement.
- 3.3** The Province will be under no obligation to renew, extend or renegotiate the terms of this Agreement following its termination or expiration.
- 3.4** The Minister may, in the Minister's sole discretion, terminate this Agreement if the Contractor's Proposal, submitted in response to the RFP, is rejected by the Minister for any reason.
- 3.5** 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 this Agreement;
 - (b)** the Contractor's fulfillment of its obligations included in Article 9.2 on or before the 30th day prior to the Commencement Date; and

- (c) the Contractor providing written confirmation, on or before the 30th day prior to the Commencement Date, in a form satisfactory to the Minister, 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 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 request for proposals process, this Agreement, at law and in equity.

The foregoing conditions 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.

4. LEGAL RELATIONSHIP INDEPENDENT CONTRACTOR

- 4.1 The Contractor is an independent contractor and not the servant, employee, partner or agent of the Province or the Minister.
- 4.2 The Contractor will not, in any manner whatsoever, commit or purport to commit the Province or the Minister to the payment of any money to any person.
- 4.3 The Minister may, from time to time, give such instructions to the Contractor as the Minister considers necessary in connection with provision of the Pavement Marking Services, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Minister 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.
- 4.5 The Contractor will, no later than 15 days after the Commencement Date, deliver to the Province,
 - (a) written notification of the name of the person appointed by the Contractor who will discharge the responsibilities of a “qualified coordinator”, as described in the *Workers Compensation Act* and the OHS Regulation, for the Contractor; and
 - (b) a written copy of the Safety Program.

5. PAVEMENT MARKING SERVICES

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

5.2 Pavement Marking Services are comprised of the following three general groups of pavement marking activities to be performed by the Contractor for the purpose of facilitating the safe and efficient movement of traffic on Highways through the use of pavement markings, all of which are to be performed in accordance with the applicable specifications set out in Schedule 1 (Pavement Marking Specifications):

- (a)** Routine Pavement Marking Services, which consist of the annual painting and repair of all of the Routine Line Inventory identified in Appendix A of Schedule 4 (Routine and Quantified Pavement Marking Services) and in accordance with the quantity set out in section 2(a) of Schedule 4 (Routine and Quantified Pavement Marking Services); and
- (b)** Quantified Pavement Marking Services, which consist of the painting and repair on a cyclical basis as determined by the Contractor and approved by the Province, of all or any of the Longitudinal Markings identified in Appendix B of Schedule 4 (Routine and Quantified Pavement Marking Services) and in accordance with the quantity set out in section 2(b) of Schedule 4 (Routine and Quantified Pavement Marking Services); and
- (c)** Additional Pavement Marking Services, which are those services related to pavement marking that are provided pursuant to Schedule 5 (Additional Pavement Marking Services).

6. CHANGES TO LINE INVENTORY

6.1 Subject to section 6.5, the Province may, in its sole discretion and for any other purpose whatsoever, including the commencement, completion, suspension, or administration of construction or improvement projects relating to one or more of the Highways or portions thereof, on 10 days' written notice to the Contractor, make an addition or deletion to the quantity of Routine Line Inventory and/or Quantified Line Inventory within the Pavement Marking Service Area, as set out in Schedules 4 (Routine and Quantified Pavement Marking Services), and:

- (a)** if the effective date of the notice is between the first day of the Contract Year and the end of the Season, the Contractor will, as soon as practicable in that Season, commence performing the changed services and, subject to section 6.3, the Contractor will not be entitled to any

additional compensation in any form whatsoever, nor will the compensation payable hereunder be reduced; or

- (b)** if the effective date of the notice given is after the completion of the most recent Season and prior to the end of the current Contract Year, the Contractor will perform the changed services in the subsequent Contract Year, compensation for which will be incorporated into that subsequent Contract Year's Adjusted Annual Price.
- 6.2** If a notice is delivered under section 6.1, then the Minister will make the calculations as set out in Part 2 of Schedule 7 (Cost for Changes to Line Inventory).
- 6.3** If the Province issues a notice under section 6.1 that has an effective date within the Season, and which results in a cumulative annual net increase or decrease of 2%, or greater, of the Annual Price, then:

 - (a)** the new Annual Price will be adjusted *pro rata* for the remainder of the Contract Year by multiplying the change in quantity of Routine Line Inventory and/or Quantified Line Inventory by the Inventory Adjustment Unit Price; and
 - (b)** any resulting payment adjustments will be made to and reflected in the next payment installment due under Schedule 7 (Fees).
- 6.4** Notwithstanding the effective date of any notice issued pursuant to section 6.1, such notice of additions or deletions to the annual quantity of Line Kilometres to be painted under Quantified Pavement Marking Services will only be given at annual adjustment time (not in the middle of the year) to provide the Contractor enough time to plan the work.
- 6.5** If, during the first Contract Year, the Province becomes aware of a discrepancy between the number of Line Kilometres estimated in Schedule 4 (Routine and Quantified Pavement Marking Services) to comprise the Routine Line Inventory and the actual annual quantity of Line Kilometres comprising the Routine Line Inventory, then the Contractor, on written notice from the Province of the necessary adjustment to the Routine Line Inventory, will perform the changed services for the rest of the Term at no additional cost to the Province, provided that:

 - (a)** the Contractor will paint a quantity of Line Kilometres that is equal to the Proposed Combined Levels of Routine and Quantified (which is defined as the sum of the fixed level of Routine Line Inventory plus the proposed level of Quantified Line Inventory) that is submitted by the Contractor in their proposal, such that:

- (i) if the Province gives notice that it overestimated the quantity of Line Kilometres comprising the Routine Line Inventory, the difference between the number included in Schedule 4 (Routine and Quantified Pavement Marking Services) and the actual number required to be painted will be added to the number of Line Kilometres comprising the Quantified Line Inventory identified in Schedule 4 (Routine and Quantified Pavement Marking Services);
or
- (ii) if the Province gives notice that it underestimated the quantity of Line Kilometres comprising the Routine Line Inventory, the difference between the number included in Schedule 4 (Routine and Quantified Pavement Marking Services) and the actual number required to be painted will be subtracted from the annual quantity of Line Kilometres comprising the Quantified Line Inventory identified in Schedule 4 (Routine and Quantified Pavement Marking Services).

6.6 Only single occurrences with additions or deletions greater than one kilometre will be considered for calculations in this Article.

6.7 The Contractor will be limited to the compensation adjustments specified in sections 6.1 and 6.3, and the Contractor will have no other remedies, either in contract under this Agreement or for claims for damages in tort, with respect to any notices issued under section 6.1.

7. CHANGES TO PAVEMENT MARKING SERVICES

7.1 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 Pavement Marking Services and, in conducting that review, take into account changing technology in the pavement marking industry, changing economic and environmental conditions and changing public requirements;
- (b) advise the Province if the Contractor considers that any part of the Pavement Marking Services should be changed in a material way, and submit the proposed change to the Province for its consideration; and
- (c) co-operate with and make commercially reasonable efforts to assist the Province with its tests to accommodate new pavement marking technology.

- 7.2** The Province may, in the Province's sole discretion, either as a result of reviews, advice or proposals made under section 7.1, or on the Province's own initiative, change the Pavement Marking Services, including changes to the Specifications, by delivery of written notice to the Contractor, specifying the change, and the Contractor will forthwith perform the Pavement Marking Services, as so changed.
- 7.3.** If a notice is delivered under section 7.2, then the Contractor and the Province will enter into negotiations to determine the appropriate compensation adjustment for the change to the Pavement Marking Services.
- 7.4** If the parties are unable to reach an agreement on compensation under section 7.3 within 60 days of notification being given under section 7.2, then the matter may be referred by either party directly to arbitration pursuant to sections 18.5 and 18.6, and in determining that issue the arbitrator will take into consideration:
- (a)** service level changes relative to existing obligations;
 - (b)** the practical effect of the change on the business operations of the Contractor, including direct cost increases and decreases and the indirect cost of a reduction in the Pavement Marking Services without a corresponding reduction in fixed and overhead costs;
 - (c)** whether, in the aggregate, the change in compensation, as negotiated under section 7.3, will result in an improvement or deterioration in the Contractor's financial condition; and
 - (d)** the provisions of this Agreement..

8. REPEATER SYSTEM

- 8.1** The Province permits the Contractor to use the Repeater System during the Term subject to the terms and conditions set out in Schedule 12 (Repeater System) and the Contractor agrees to observe and comply with these terms and conditions.

9. INSURANCE AND INDEMNITY

- 9.1** The Contractor will obtain and maintain in force during the Term:
- (a)** commercial general liability insurance providing coverage of not less than \$5 million inclusive per occurrence, and \$10 million in the annual aggregate, 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 Pavement Marking Services, or

any of them, in any way relating to the performance of services within the Pavement Marking 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 16 (Insurance Requirements);

- (b)** automobile liability insurance in an amount not less than \$5 million 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 Pavement Marking Services by the Contractor, or Subcontractors, including all persons, firms or corporations who perform any of the Pavement Marking Services, or any of them, against "all risks" of loss or damage

and the terms of the foregoing insurance coverage will meet the insurance requirements in Schedule 16 (Insurance Requirements) and will be placed with an insurer or insurers acceptable to the Minister.

- 9.2** Evidence satisfactory to the Minister that the insurance required under section 9.1 has been obtained must be submitted by the Contractor to the Minister not later than the 30th day prior to the Commencement Date and the Contractor will, upon the request of the Minister made at any time or times, submit to the Minister evidence, satisfactory to the Minister, that the insurance remains in force and effect.
- 9.3** The Contractor will ensure that the insurance described in section 9.1 may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 day's prior written notice to the Province and if notice of cancellation or material change is given the Contractor's obligations under section 9.1 will continue in effect.
- 9.4** The Contractor will provide 30 day's written notice to the Minister 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.
- 9.5** The Contractor will, at the request of the Minister, in the Minister's sole discretion, secure insurance to replace the insurance coverage provided in compliance with section 9.1 with new coverage terms or increased policy limits, as specified by the Minister.

- 9.6** The Minister may, in the Minister's sole discretion, review the insurance requirements stipulated by this Article and Schedule 16 (Insurance Requirements) and the Contractor will cooperate as required to implement any changes arising from this review.
- 9.7** The Contractor will indemnify and save harmless the Province and the Minister 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 and the Minister or either of them 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 the Contractor's Subcontractors, servants, employees, agents, management, shareholders, directors and suppliers or any of them pursuant to this Agreement including 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. BONDS

- 10.1** The Contractor will obtain and maintain the Bonds in full force and effect during the Term, in accordance with the format and terms specified in Schedule 15 (Bonds).
- 10.2** The Bonds will both be issued by one surety company, or one group of surety companies, that are 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. CONTRACTOR'S COVENANTS

- 11.1** 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, this Agreement, or the services to be performed under this Agreement;
 - (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 Minister;

- (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 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;
- (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 and make commercially reasonable efforts to assist the Province in the completion of a maximum of two Plate Tests for each type of paint used per Season;
- (i)** co-operate with the Province and any other contractors providing services to the Province in the Pavement Marking Service Area and in areas adjacent to the Pavement Marking Service Area;
- (j)** perform the Pavement Marking Services in a good manner, free of defects or deficiencies and to the satisfaction of the Minister;
- (k)** repair, at its own expense, all damage to government property caused by the Contractor;
- (l)** continually train its staff in the safe operation of pavement marking equipment to the satisfaction of the Minister;
- (m)** 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 Pavement Marking 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 Routine, Quantified and Additional Pavement Marking Services and to comply with the Contractor's Quality Plan;

- (n)** paint, identify and light the equipment in accordance with the requirements set out in Schedule 11 (Equipment Requirements) and such other requirements of which the Minister may advise the Contractor by written notice from time to time;
- (o)** mount a DPMMI to each paint application vehicle, in compliance with Part B of Schedule 1 (Pavement Marking Specifications) and the requirements set out in subsection 14.4(f), and have each such DPMMI calibrated at least once per year by the supplier;
- (p)** create and maintain an inventory of all line types in the Pavement Marking Service Area, in compliance with the reporting requirements set out in Article 14 (Records and Reports);
- (q)** inspect, each year, the condition of all Longitudinal Markings, in compliance with the reporting requirements set out in subsection 14.4(b);
- (r)** observe and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof relating to the environment or to occupational health and safety, including the *Workers Compensation Act*, and the OHS Regulation, directly or indirectly applicable to the Contractor or this Agreement, including by ensuring that the provision of and performance of the Pavement Marking Services, complies with all such laws, by-laws, orders, directions, rules and regulations;
- (s)** notwithstanding any limitation in the OHS Regulation which would exempt the Contractor from the requirement to initiate and maintain an occupational health and safety program, initiate and at all times maintain an occupational health and safety program in connection with the Pavement Marking Services and this Agreement, and ensure that the occupational health and 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;

- (t) carry out the responsibilities of the Prime Contractor under the *Workers Compensation Act* and the OHS Regulation, in connection with the Pavement Marking Services and this Agreement, and for the purposes of *Workers Compensation Act* and the OHS Regulation, the workplace as therein defined is the worksite at which the painting operations are currently taking place; and
 - (i) if another party is the Prime Contractor in connection with another adjacent or nearby worksite, the Contractor will continue to perform the obligations of the Prime Contractor for the worksite at which the painting operations are currently taking place and:
 - (A) cooperate with the other party so as to coordinate the health and safety activities on the adjacent or nearby worksite; and
 - (B) notify the other party of any hazard created by virtue of overlapping or adjoining work activities and ensure the hazards are addressed throughout the duration of such activities;
- (u) perform, or cause Subcontractors to perform, where applicable, all Pavement Marking Services in a manner which meets or exceeds the specifications set out in Schedule 1 (Pavement Marking Specifications);
- (v) provide to the Minister all of the Contractor information specified in Schedule 14 (Contractor Detail) with respect to a corporate Contractor, a Contractor that is a partnership and with respect to each corporate partner of a Contractor that is a partnership, no later than 30 days prior to the Commencement Date; and
- (w) comply in all respects with the terms and conditions set out in the Privacy Protection Schedule attached as Schedule 13 to this Agreement.

12. ANNUAL PRICE AND FEES

12.1 In consideration of the Contractor:

- (a) providing the Core Services and performing all other obligations of the Contractor under this Agreement, except Additional Pavement Marking Services, the Province will, subject to the terms of this Agreement including section 17.2 and subsection 19.2(b), pay to the Contractor the Annual Price corresponding to each Contract Year;
- (b) providing the Additional Pavement Marking Services, the Province will, subject to the terms of this Agreement, pay to the Contractor fees in the

amounts and in the manner set out in Schedule 5 (Additional Pavement Marking Services).

- 12.2** The sums described in subsection 12.1(a) constitute the maximum amounts payable to the Contractor for its performance of the Core 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:
- (a)** the Annual Price is adjusted during that Contract Year in accordance with this Agreement; or
 - (b)** the Contractor performs Additional Pavement Marking Services during that Contract Year at the request of the Minister in accordance with this Agreement.
- 12.3** 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, as defined in the *Financial Administration Act*, 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 *Financial Administration Act*, not having controlled or limited, under the *Financial Administration Act*, expenditure under any Appropriation referred to in subsection (a) of this section.
- 12.4** All sums due and owing by the Contractor to the Province under this Agreement will be set off by the Province during the Term.
- 12.5** All payments made under this Agreement, net of sums set off as provided under section 12.4, will be paid by electronic fund transfer to the appropriate party.
- 12.6** Concurrent with each setoff payment, the Province will deliver to the Contractor an accounting of the sums due and owing by the parties under this Agreement to the date of the payment.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1** The Contractor will not without the prior written consent of the Minister assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement.
- 13.2** The Contractor may subcontract any obligation of the Contractor under this Agreement to any person, except if the Minister has notified the Contractor that the Minister's written consent is to be obtained prior to any such subcontracting by the Contractor.
- 13.3** 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.
- 13.4** The Contractor will at all times be held fully responsible to the Province for the acts and omissions of its Subcontractors 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 or any of its employees.
- 13.5** The Contractor will cause every subcontractor to be bound by the terms of this Agreement so far as they apply to the Pavement Marking Services to be performed by each subcontractor.
- 13.6** Nothing in this Agreement will create any contractual relationship between the Province and a Subcontractor of the Contractor.
- 13.7** The Minister may, without the prior consent of the Contractor, assign in whole or in part, either directly or indirectly, this Agreement or any rights of the Minister under this Agreement.
- 13.8** 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 Minister's rights and obligations under this Agreement, and a reasonable transition in performance of the Pavement Marking Services as a result of any assignment, expiration or termination of this Agreement and this obligation will survive such expiration, termination or assignment.

14. RECORDS AND REPORTS

- 14.1** 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 Minister;

- (b) give written particulars of the location within British Columbia, referred to in subsection 14.1(a), to the Minister, 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; and
- (c) permit the Province, its servants 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 subsection 14.1(a).

14.2 The Contractor will upon the request, from time to time, of the Minister:

- (a) deliver to the Province copies of any or all records demonstrating the compliance of the Contractor with the laws, by-laws, orders, directions, rules and regulations referenced in section 11.1, including the *Workers Compensation Act*, and the OHS Regulation; and
- (b) permit the Minister at all reasonable times to inspect, examine, review and copy any and all findings, data, specifications, drawings, working papers, reports, documents and material whether complete or otherwise that have been produced, received or acquired by the Contractor, the Province or the Ministry, or provided by or on behalf of the Province or the Minister to the Contractor as a result of or in connection with this Agreement.

14.3 All case files, materials, software, manuals and memoranda of any ministry of the Province of British Columbia related to the provision of the Pavement Marking Services that are, from time to time, in the possession or control of the Contractor will at all times be the exclusive property of the Province. All aforesaid items will be immediately delivered by the Contractor to the Minister on the expiration or sooner termination of this Agreement and each aforesaid item will be immediately delivered by the Contractor to the Minister on the earlier of:

- (a) the expiration or sooner termination of this Agreement; and
- (b) the completion by the Contractor of the provision of services under this Agreement.

14.4 The Contractor will:

- (a) provide to the Minister, as required by the Minister from time to time, reports relating to the compliance of the Contractor with the laws, by-laws, orders, directions, rules and regulations referenced in section 11.1, including the *Workers Compensation Act* and the OHS Regulation;

- (b)** provide the Line Condition Report in the required Excel spreadsheet format, which is located on the Ministry Website, to the Ministry Representative, no later than @@March 15th for TC, OK-KO OR April 1st for LM, VI, NR@@ of each year, in accordance with the following requirements:
- (i)** provide an assessment of all lines on all Highways identified in Appendix B of Schedule 4 (Routine and Quantified Pavement Marking Services);
 - (ii)** identify lines that do not require re-painting on all Highways identified in Appendix A of Schedule 4 (Routine and Quantified Pavement Marking Services);
 - (iii)** identify lines as 'Poor' if, when compared to ASTM Method D913 photo No. 2 - 60%, 60% or less of the line is visible;
 - (iv)** identify lines as 'Fair' if, when compared to ASTM Method D913 photo No. 4 - 77%, if no less than 61% and no more than 77% of the line is visible; and
 - (v)** identify lines as 'Good' if, when compared to ASTM Method D913 photo No. 6 - 92%, no less than 78% of the line is visible; and
 - (vi)** identify the line type of the Poor, Fair and Good sections of the Highways by LKI segments and partial segments; the segments/partial segments must not be longer than @@10 km for LM, VI, OK-KO OR 25 km for TC, NR@@ km and must have the same start and end coordinates as in the Line Type Report and the Accomplishment Report; and
 - (vii)** identify the start and end coordinates (latitude and longitude) of each section.
- (c)** provide a proposed Quantified Plan to the Ministry Representative for approval; no later than @@April 1st for TC, OK-KO OR April 15th for LM, VI, NR@@ of each year, and
- (i)** when the proposed Quantified Plan has been submitted by the Contractor to the Ministry Representative for approval, the Ministry Representative will, as soon as is reasonably practicable, and in any event no later than 10 Business Days after receiving the proposed plan, advise the Contractor whether the proposed plan is satisfactory, and if not satisfactory, in what respects it is not satisfactory;

- (ii) if the Ministry Representative advises the Contractor that the proposed Quantified Plan is satisfactory, the proposed plan will be the Quantified Plan for that year;
- (iii) if, pursuant to paragraph (i) of this subsection, the Ministry Representative advises the Contractor that the proposed Quantified Plan is not satisfactory, within 10 Business Days of being so advised, the Contractor will submit a second proposed plan to the Ministry Representative for approval, and the Ministry Representative will, as soon as is reasonably practicable, and in any event no later than 10 Business Days after receiving the second proposed plan, advise the Contractor whether the proposed plan is satisfactory;
- (iv) if the Ministry Representative advises the Contractor that the second proposed Quantified Plan is satisfactory, the second proposed plan will be the Quantified Plan for that year;
- (v) if the Contractor either does not submit a proposed Quantified Plan by April 15th of that year, or if the Contractor does not, pursuant to paragraph (iii) of this subsection, submit a second proposed Quantified Plan that is satisfactory to the Ministry Representative, the Minister may impose on the Contractor a Quantified Plan for that year by delivering to the Contractor a copy of that Quantified Plan as prepared by the Minister.
- (d) provide the Work Plan to the Ministry Representative, no later than the 25th day of each month for the following month. The Work Plan will include the location and week of planned Routine Pavement Marking Services and Quantified Pavement Marking Services outlined in section 5.2.
- (e) provide the Accomplishment Report in the required format, which is located on the Ministry Website , to the Ministry Representative no later than the 5th Operational Day of each month for the prior month. In the Accomplishment Report, the Contractor will:

 - (i) set out monthly and contract year-to-date summaries and locations of all performed Routine and Quantified Pavement Marking Services and all repaint performed under Other Additional Pavement Marking Services;
 - (ii) identify locations by LKI segments and partial segments; the segments/partial segments must not be longer than @@10 km for LM, VI, OK-KO OR 25 km for TC, NR@@, and must have the

same start and end coordinates as in the Line Type Report and the Line Condition Report; and

- (iii) identify the start and end coordinates (latitude and longitude) of each section;
- (f) provide to the Ministry Representative, upon request, reports relating to the operation of the DPMMI and the data collected by using the DPMMI, details of which are outlined in Part B of Schedule 1 (Pavement Marking Specifications), including, without limitation, the following information:

 - (i) the raw data from the DPMMI in a Microsoft Excel spreadsheet format;
 - (ii) site specific and/or entire logs of raw data files from the DPMMI, as requested; and
 - (iii) proof of calibration for each DPMMI unit, for each year of that unit's operation;
- (g) provide to the Ministry Representative, upon request, detailed records that reference load slips for paint, bead and any other product used in the provision of the Services, including quantities and locations used;
- (h) provide to the Ministry Representative no later than December 15 of each Contract Year, the Line Type Report containing a current inventory of all types of lines in the Pavement Marking Service Area, in the required Microsoft Excel spreadsheet format which is located on the Ministry Website; and which must meet the following requirements:

 - (i) locations must be identified by LKI segments and partial segments; the segments/partial segments must not be longer than @@10 km for LM, VI, OK-KO OR 25 km for TC, NR@@, and must have the same start and end coordinates as in the Accomplishment Report and in the Line Condition Report;
 - (ii) the start and end coordinates (latitude and longitude) of each section must be identified;
 - (iii) the aggregate length of each line type must be identified; and
 - (iv) notwithstanding the annual requirement set out in this subsection (h), the Contractor will have up to the first two Contract Years of the Term in which to submit the first Line Type Report, with a minimum of 50% of that report to be submitted in the first Contract Year and

no less than the whole of that report to be submitted in the second Contract Year;

- (i) provide to the Ministry Representative, no later than December 31st of each year, either a certificate from a senior officer or director of the Contractor, certifying that the Contractor's details provided in Schedule 14 (Contractor Detail) are unchanged or, if the Contractor's details have changed, a replacement for Schedule 14 (Contractor Detail), certified to be correct by a senior officer or director of the Contractor.

15. FINANCIAL AND ACCOUNTING AUDIT

- 15.1** 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.
- 15.2** The Contractor will fully co-operate with the Province in conducting an audit under section 15.1.
- 15.3** The Contractor will, upon the request of the Minister, provide to the Province a copy of the audited (or if unavailable, unaudited) financial statements of the Contractor.
- 15.4** The Contractor will prepare, such financial information, reports or statements relating to the Contractor's financial condition and accounting records as the Minister may request and will deliver the same to the Minister at such time or times as the Minister may specify.

16. QUALITY MANAGEMENT

- 16.1** The Contractor is responsible for the quality of the Pavement Marking Services, in accordance with this Agreement, the Specifications and the Contractor's Quality Plan.
- 16.2** The Contractor's Quality Plan for delivery of the Pavement Marking Services will be prepared by the Contractor and provided to the Ministry Representative, and the Contractor's Quality Plan will include, without limitation, the following:
 - (a)** documentation of all processes for all Pavement Marking Services in detail;
 - (b)** documentation of the Contractor's processes to ensure Quality Control and Quality Assurance, outlining details on how the following tests will be performed and recorded:
 - (i)** colour
 - (ii)** dimensions

- (iii)** retro-reflectivity:

 - sampling must be made using a sample size of 20 measurements at 5 metre intervals on a single line;
 - all measurements for retro-reflectivity must be made within a single test site and may be averaged and recorded as an average;
 - testing for retro-reflectivity must be carried out only when the newly painted surface is clean, dry, free of all excess beads, and after 24 hours of paint being applied;
 - all measurements for retro-reflectivity must be made using a Mirolux MX-30, Stripemaster or Stripemaster 2 retro-reflectometer or equivalent, as approved in writing by the Ministry. Measurements must be made using the retro-reflectometer manufacturer's instructions for operation and procedures and must be made only by competent staff;
- (iv)** thickness and consistency; and
- (v)** daytime visibility;
- (c)** documentation of the Contractor's processes for using and calibrating the DPMMIs, and tracking the required data from the units;
- (d)** an internal non-conformance process to be initiated by the Contractor when materials, products or Pavement Marking Services fail to meet the terms and conditions of this Agreement, outlining:

 - (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 Pavement Marking 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 used 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.

- 16.3** The Contractor must have the Ministry Representative's written acceptance of the Contractor's Quality Plan no later than 60 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.
- 16.4** The Contractor must implement, maintain and conform to the Contractor's Quality Plan through the Term.
- 16.5** 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.
- 16.6** The Province may audit the Contractor's Quality Plan and conduct monitoring and auditing, at times and in accordance with the Provincial Quality Plan, 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.
- 16.7** 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.
- 16.8** The Contractor must 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.

17. DEFAULT AND REMEDIES

- 17.1** 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 or the Minister 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 to occur, a default under this Agreement, and such notice 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 Minister, 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 Minister, 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 Minister, to carry on business as a going concern;

- (n)** the Contractor, without the prior written approval of the Minister, 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 Minister, the direct or indirect legal or beneficial ownership and effective control of the Contractor changes from that represented in subsection 2.1 (k); or
- (p)** any action is taken to enforce any security interest, charge or encumbrance granted, created or issued by the Contractor.

17.2 On the happening of an Event of Default, or at any time thereafter, the Minister 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 it at law or in equity;
- (b)** retain as a holdback from any payment due to the Contractor under subsection 12.1(a), if the Event of Default is a failure to perform any of the Pavement Marking Services in accordance with this Agreement, an amount equal to twice the value of the Pavement Marking Services not performed, such value to be determined by the Minister in the Minister'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 subsection 17.2 (b);
- (d)** require the Contractor to cure the Event of Default within a time period specified by the Minister;
- (e)** if an Event of Default with respect to which an amount has been retained as a holdback under subsection 17.2 (b):
 - (i)** has been cured by the Contractor to the satisfaction of the Minister within a time period specified by the Minister, 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 Minister, within a time period specified by the Minister, then the Province may keep the amount retained as a reduction of fees otherwise payable to the Contractor under Part I of the Schedule 7 (Fees) and the Contractor and the Province

agree that an amount equal to twice the value of the Pavement Marking Services not performed, determined according to subsection 17.2 (b), is an appropriate estimate of the losses and damages incurred by the Province arising from the Contractor's default, after taking into account the Province's increased administration costs, the costs of hiring an alternate Contractor to perform the the Pavement Marking Services, the delays in the performance of those services and the costs associated with traffic closures or delays, if any, which resulted from the default;

- (f) waive the Event of Default; and
- (g) terminate this Agreement, subject to the expiration of any time period specified by a notice delivered pursuant to subsection 17.2 (d).

17.3 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.

17.4 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.

17.5 No interest will be payable by the Province on any amount retained as a holdback in accordance with subsection 17.2 (b).

18. DISPUTE RESOLUTION

18.1 Upon a dispute arising out of or in connection with any provision of this Agreement, the parties will consider in good faith whether to elect to follow the Dispute Resolution Protocol set out in Schedule 10 (Dispute Resolution Protocol) in attempting to resolve the dispute.

18.2 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.

18.3 Nothing in this Article obliges a party to elect to follow the Dispute Resolution Protocol in respect of a particular or any dispute.

- 18.4** Subject to sections 18.1 to 18.3, any disputes arising out of or in connection with this Agreement may be referred by either party to, and finally resolved by, arbitration pursuant to the *Commercial Arbitration Act*.
- 18.5** Notwithstanding sections 18.1 to 18.4, any dispute arising out of or in connection with section 7.4 of this Agreement or section 5 of Schedule 9 (Annual Adjustment Process) may be referred by either party to, and finally resolved by, arbitration pursuant to the *Commercial Arbitration Act*.
- 18.6** If either party, pursuant to section 18.4 or section 18.5, decides to refer a dispute arising out of or in connection with this Agreement to be finally resolved by arbitration, then:
- (a)** the parties must chose and appoint a mutually acceptable arbitrator within 15 days of when the party wanting to refer the subject dispute to arbitration notifies the other party of that decision to refer;
 - (b)** the arbitrator to be appointed must have qualifications, by profession or occupation, and experience relevant to the issues in the subject dispute for which the arbitrator is to be appointed, provided that no person will be nominated or appointed as arbitrator who is, or at any time has been, interested in the business affairs of the Contractor or any consultant or subcontractor of the Contractor;
 - (c)** if the parties fail to agree on a suitable arbitrator to be appointed within the time period referenced in subsection 18.6(a), either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a neutral, independent person to act as an neutral, independent arbitrator for the subject dispute; and
 - (d)** in the absence of any written agreement otherwise, the place of arbitration will be either Victoria or Vancouver, British Columbia, at the Province's option.

19. FORCE MAJEURE

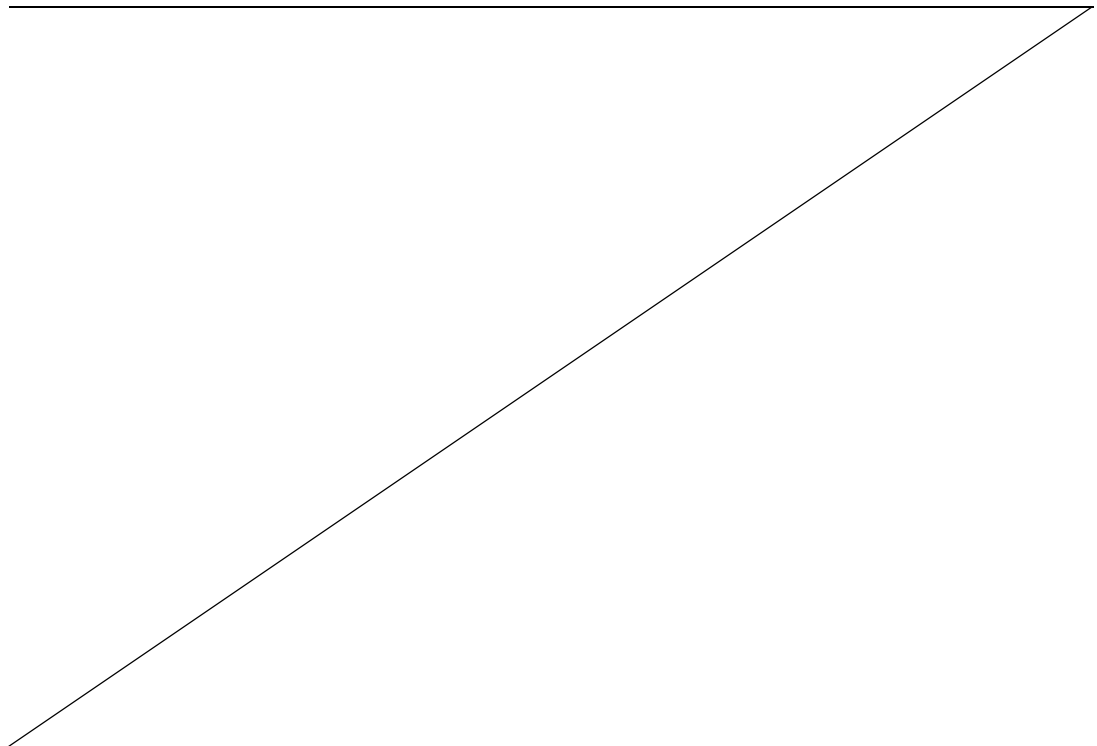
- 19.1** An event of Force Majeure will only be considered if it occurs during the Season.
- 19.2** If an event of Force Majeure occurs or is likely to occur, then:
- (a)** the party directly affected will notify the other party immediately, and will use commercially reasonable efforts to remove, curtail 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; and

- (b)** if the party directly affected by the event of Force Majeure is the Contractor, then the Province will not be obliged to pay to the Contractor any amounts pursuant to Part I of Schedule 7 (Fees) attributable, as determined by the Minister, to the period during which the event of Force Majeure is continuing.

19.3 Notwithstanding the Contractor's inability to supply Pavement Marking Services while the event of Force Majeure continues, the Contractor must re-schedule the performance of the Pavement Marking Services to ensure that all Pavement Marking Services scheduled for the then current Contract Year are performed during that Contract Year.

19.4 If the Contractor is faced with delays in the performance or completion of work under the Contract as a result of either picketing by a union or unions, or some other form of protest, it will immediately, at its own expense and for the purpose of allowing the work to continue or be completed without further delay,

- (a)** in the case of picketing by a union or unions, take all necessary steps to seek a cease and desist order or orders from the Labour Relations Board of British Columbia; or
- (b)** in the case of interference from a non-unionized person or persons, take all necessary steps to seek an injunction or injunctions from the Supreme Court of British Columbia.



20. NOTICES

20.1 Any notice, document, statement, report, demand to be given or made under this Agreement, will be in writing and may be given or made by personal delivery to the party to whom it is to be given or made, from either party or the Minister, or by mailing in Canada with postage prepaid addressed,

(a) if to the Province, Minister or the Ministry Representative (or all of them):

Ministry of Transportation and Infrastructure
@@ Region
@Address@

Attention: Ministry Representative

with a copy to:

Ministry of Transportation and Infrastructure
Rehabilitation and Maintenance Branch
4C-940 Blanshard Street
Victoria, British Columbia
V8W 3E6

Attention: Manager, Maintenance Contracts Procurement

(b) and if to the Contractor:

@Contractor Name@
@Address@

Attention: @@

and any such notice, document, statement, report, or demand so mailed will be deemed given to and received by the addressee on the third Business Day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

20.2 Any notice, document, statement, report, or demand to be given or made under this Agreement may be transmitted by electronic mail to the party to whom it is to be given or made, by transmission from either party or the Minister, to the applicable electronic mail address, as follows:

(a) if to the Province, Minister or the Ministry Representative (or all of them):

Email: @@,

Attention: Ministry Representative

with a copy to:

Email: Maintenance.Programs@gov.bc.ca.

Attention: Manager, Maintenance Contracts Procurement

(b) and if to the Contractor:

Email: @@;

Attention: @@

and any such notice, document, statement, report, or demand so transmitted will be deemed given to and received by the intended recipient, when capable of being retrieved by the intended recipient at the particular electronic address above.

20.3 Either party may, from time to time, advise the other by notice in writing of any change of address or electronic mail address of the party giving such notice and, from and after the giving of such notice, the address or electronic mail address therein specified will, for purposes of this Agreement, be deemed to be the address or electronic mail address of the party giving such notice.

21. MISCELLANEOUS

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

21.2 Any property, including Provincial Material, provided by or on behalf of the Province or the Minister to the Contractor as a result of this Agreement will be the exclusive property of the Province and will, subject to the following proviso, be delivered by the Contractor to the Minister immediately following the expiration or sooner termination of this Agreement, provided that the Minister may, at any time or times prior to the expiration or sooner termination of this Agreement, give

written notice to the Contractor requesting delivery by the Contractor to the Minister of all or any part of such property in which event the Contractor will immediately comply with such request.

- 21.3** The Contractor will treat as confidential and will not, without the prior written consent of the Minister, 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, 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.
- 21.4** 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 Minister, 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.
- 21.5** 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.
- 21.6** Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
- 21.7** Public disclosure of this Agreement, 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*.
- 21.8** Time will be of the essence of this Agreement.
- 21.9** 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.

- 21.10** 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.
- 21.11** 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.
- 21.12** 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.
- 21.13** This Agreement may only be amended by a further written agreement executed by both parties.
- 21.14** The Contractor will use commercially reasonable efforts to adopt electronic modes of communication and transfer of information in formats and through modes of communication specified by the Province.

22. INTERPRETATION

- 22.1** 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.
- 22.2** 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.
- 22.3** 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.

22.4 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.

22.5 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.

22.6 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.

22.7 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.

