

**September 28, 2007**

**THE MINISTER OF TRANSPORTATION ON BEHALF OF THE GOVERNMENT OF  
THE NORTHWEST TERRITORIES AND THE COMMISSIONER OF THE  
NORTHWEST TERRITORIES**

**- and -**

**DEH CHO BRIDGE CORPORATION LTD.**

**DEH CHO BRIDGE PROJECT  
CONCESSION AGREEMENT**

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## **CONCESSION AGREEMENT**

**THIS CONCESSION AGREEMENT** made as of the 28<sup>th</sup> day of September, 2007.

**B E T W E E N:**

**THE MINISTER OF TRANSPORTATION ON BEHALF OF THE  
GOVERNMENT OF THE NORTHWEST TERRITORIES AND  
THE COMMISSIONER OF THE NORTHWEST TERRITORIES**

(hereinafter called "GNWT")

**OF THE FIRST PART**

- and -

**DEH CHO BRIDGE CORPORATION LTD.**, a corporation  
incorporated under the laws of the Northwest Territories

(hereinafter called the "Project Company")

**OF THE SECOND PART**

### **WHEREAS:**

The GNWT Lands are under the administration and control of GNWT and the Federal Lands are under the administration and control of the Federal Government;

Following completion of construction of the Facility, the Federal Lands will become Commissioner's Land and will be subject to the administration and control of GNWT;

GNWT wishes to develop a new two-lane toll bridge of approximately one (1) kilometre near Fort Providence, together with bridge approaches to connect to existing highways, and is prepared to grant a concession to the Project Company for such purpose and to enter into this Agreement pursuant to Section 2 of the Act;

Pursuant to such concession, GNWT is leasing the Facility Lands to the Project Company as hereinafter described;

The Project Company has agreed to accept the grant of the concession and lease herein provided and will enter into contracts with appropriate parties for the purpose of developing, designing, building, financing, operating, managing, maintaining and rehabilitating the Facility throughout the Term granted hereby;

The Project Company will lease the completed Facility and sublease the Facility Lands to GNWT in order that the Facility may be used as a public highway, and in consideration for such lease and sublease, GNWT shall make the Sublease Payments, as herein provided;

GNWT will be responsible for the supply, installation, operation, management, maintenance and rehabilitation of the Toll System throughout the Term and will enter into contracts in connection therewith; and

GNWT has agreed that, subject to the provisions hereof, the Project Company may assign as security or encumber this Concession Agreement or parts hereof and the lease provided for herein to and in favour of a Lender or Lenders.

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

Unless the context otherwise specifies or requires, for the purposes of this Agreement, the following terms shall have the meanings set forth in this Section 1.1:

**"Acceptance Notice"** has the meaning attributed to such term in Section 21.2.

**"Accounts"** means, collectively, the Payment Account, the Construction Account and the Debt Service Account.

**"Act"** means the *Deh Cho Bridge Act* (Northwest Territories).

**"Additional Debt Amount"** means the amount of financing (if any) in addition to the Base Debt Amount but expressly excluding any financing to fund Ineligible Cost Overruns arranged or contributed to by the Project Company at the request of GNWT to fund Eligible Cost Overruns and on terms and conditions satisfactory to GNWT in its Sole Discretion.

**"Additional Funds"** means, for each Concession Year, the amount (if any), by which the Annual Requirement for such Concession Year exceeds the Base Amount for such Concession Year.

**"Additional Funds Outstanding Balance"** means, at any time, and subject to Subsections 16.2(f), (g) and (h), the aggregate of the Additional Funds advanced by GNWT pursuant to Section 11.2, amounts otherwise deemed to be Additional Funds pursuant to this Agreement, amounts (if any) paid by GNWT prior to the Traffic Availability Date on account of the Debt (whether pursuant to Subsection 11.3(a) or otherwise) and amounts (if any) paid by GNWT on account of Eligible Cost Overruns (which Eligible Cost Overruns, for greater certainty are not otherwise paid for by the Pre-Funded Contingency Amount), and, in each case, not yet repaid, together with interest thereon at the Interest Rate.

**"Advisors"** means Project Company's Advisors or GNWT Advisors, as the case may be.



**"Affected Party"** has the meaning attributed thereto in Section 15.2.

**"Affected Party Advisors"** means Project Company's Advisors if the Project Company is the Affected Party and GNWT Advisors if GNWT is the Affected Party.

**"Agreement"**, **"this Agreement"**, **"the Agreement"**, **"hereto"**, **"hereof"**, **"herein"**, **"hereby"**, and similar expressions means or refers to this Concession Agreement, including, for the avoidance of doubt, all schedules and attachments hereto.

**"Annual Operating Costs"** means:

- (a) in the case of the Partial Concession Year, an amount equal to the Partial Concession Year Operating Costs;
- (b) in the case of the first full Concession Year, an amount equal to the Base Year Operating Costs;
- (c) in the case of each of the next four (4) Concession Years thereafter, an amount equal to the Annual Operating Costs for the immediately preceding Concession Year multiplied by a fraction having as its numerator, the Canada CPI as at the date thirty (30) days prior to the commencement of the Concession Year and as its denominator, the Canada CPI as at the date thirty (30) days prior to the commencement of the immediately preceding Concession Year; and
- (d) in the case of each Concession Year in each five (5)-Concession Year period thereafter, an amount equal to the annual Total OMM Costs for each Concession Year of such five (5)-Concession Year Period, as agreed to by GNWT and the Project Company or as determined in accordance with Section 4.14.

**"Annual Requirement"** means, for each Concession Year, an amount equal to the aggregate of:

- (a) the Annual Operating Costs;
- (b) the Debt Service Payment; and
- (c) the Base Return Amount;

applicable to such Concession Year.

**"Approval"**, **"Approved"**, **"Approved by GNWT"** and similar expressions means approval or consent by GNWT in accordance with the provisions of Section 1.4 of this Agreement.

**"Arbitrator"** has the meaning attributed to such term in Section 24.2.

**"Arbitration Act"** means the *Arbitration Act* (Northwest Territories).

**"Archaeological/Historical Finds"** means property of archaeological or historical significance or heritage resources located in, under or on the GNWT Lands, the Federal Lands or the Corridor Lands, and includes Unknown Archaeological/Historical Finds.

**"Article", "Section", "Subsection", "Paragraph", "Subparagraph" and "Schedule"** mean and refer to the specified article, section, subsection, paragraph, subparagraph or schedule of or to this Agreement.

**"Assumption and Assignment Documents"** has the meaning attributed to such term in Section 20.1.

**"Audit"** and similar expressions mean, with respect to any matter or thing relating to the Facility, the Work or this Agreement, the performance by or on behalf of GNWT or the Project Company, as the case may be, of such reviews, investigations, inspections, audits, confirmations, certifications, tests, studies and determinations of or relating to such matter or thing as GNWT or the Project Company, as the case may be, may determine in its Sole Discretion to be advisable or desirable in the circumstances, conducted in each case, in accordance with applicable industry accepted practices, if any.

**"Average Prime Rate"** means, on any given day, the average of the Prime Rates on such day.

**"Base Amount"** means, for each Concession Year, the aggregate of the Base Contribution, the Revenues and the amount of any Sales Taxes and Realty Taxes for which GNWT is responsible under Section 3.13.

**"Base Contribution"** means:

- (a) in the case of the Partial Concession Year, an amount to be Approved by GNWT having regard to the condition in Subsection 2.1(c)(i), which amount shall not exceed three million, nine hundred and eighty thousand dollars (\$3,980,000), multiplied by a fraction having as its numerator, the Canada CPI as at the date thirty (30) days prior to the commencement of the calendar year in which the Traffic Availability Date occurs, and as its denominator, the Canada CPI as at the date thirty (30) days prior to the commencement of 2011, and further multiplied by a fraction having as its numerator the number of days in the Partial Concession Year, and as its denominator, the number three hundred sixty-five (365),
- (b) in the case of the first full Concession Year, an amount to be Approved by GNWT having regard to the condition in Subsection 2.1(c)(i), which amount shall not exceed three million, nine hundred and eighty thousand dollars (\$3,980,000), multiplied by a fraction having as its numerator, the Canada CPI as at the date thirty (30) days prior to the commencement of the first full Concession Year and as its denominator, the Canada CPI as at the date thirty (30) days prior to the commencement of 2011,
- (c) for each Concession Year thereafter, an amount equal to the Base Contribution for the immediately preceding Concession Year, multiplied by a fraction having as its numerator, the Canada CPI as at the date thirty (30) days prior to the

commencement of the Concession Year, and as its denominator, the Canada CPI as at the date thirty (30) days prior to the commencement of the immediately preceding Concession Year, and

- (d) the Base Contribution shall be reduced by 50% for any period in respect to which early completion bonus amounts payable by the Project Company to the Contractor in respect of achieving the Traffic Availability Date prior to the Expected Completion Date under the terms of the Construction Contract are paid.

**"Base Debt Amount"** means the amount, including the Pre-Funded Contingency Amount, as described in Schedule 1 [Terms of Debt].

**"Base Debt Service"** means the Debt Service payable with respect to the Base Debt Amount, as described in Schedule 1 [Terms of Debt].

**"Base Return Amount"** means, for each Concession Year except the Partial Concession Year, an amount equal to four and one-half percent (4.5%) per annum of the Invested Equity, calculated annually and payable in accordance with the provisions of Subsection 11.3(c). For the Partial Concession Year, the "Base Return Amount" established immediately above shall be multiplied by a fraction having as its numerator the number of days in the Partial Concession Year, and as its denominator, the number three hundred sixty-five (365).

**"Base Toll Rate"** means the toll rate established by GNWT and the Project Company on or before the Effective Date in accordance with the provisions of the Toll System Protocol, Supply and Management Agreement.

**"Base Year Operating Costs"** means six hundred thousand dollars (\$600,000).

**"Business Day"** means any day which is not:

- (a) a Saturday or a Sunday; or
- (b) a day observed as a holiday under the laws of the Northwest Territories or the federal laws of Canada applicable to the Northwest Territories.

**"Canada CPI"** means the All-Items Consumer Price Index for Canada, as published by Statistics Canada (or by a successor or other government agency, including a provincial agency), or, if the Consumer Price Index is no longer published or is not published for the relevant period or time, an index published in substitution for the Consumer Price Index for such relevant period or time, or any comparable replacement index designated by GNWT, acting reasonably. If a substitution or replacement is required, GNWT, acting reasonably, will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other governmental agency), GNWT will make the necessary conversion, acting reasonably. If any calculation is required to be made under this Agreement based on the Canada CPI as at a particular date or for a particular period and the Canada CPI for such date or period is not available as at the time the calculation is required to be made, GNWT, acting reasonably, shall be entitled to estimate the Canada CPI for the purposes

of such calculation, subject to adjustment following the Canada CPI for the relevant date or period becoming available.

**"Canadian Dollars", "Cdn. Dollars"** and the symbol "\$" means the lawful currency of Canada.

**"Claim"** has the meaning attributed thereto in Subsection 14.3(a).

**"Claiming Party"** has the meaning attributed thereto in Subsection 14.3(a).

**"Commissioner"** means the Commissioner of the Northwest Territories.

**"Commissioner's Land"** means Commissioner's land as defined in the *Commissioner's Land Act* (Northwest Territories).

**"Commencement of Construction"** means the commencement of the Early Start Work as defined in the Limited Notice to Proceed.

**"Concession Fee"** has the meaning attributed to such term in Section 3.7.

**"Concession Termination Date"** means December 31<sup>st</sup> of the calendar year in which the thirty-fifth (35<sup>th</sup>) anniversary of the Traffic Availability Date occurs.

**"Concession Year"** means each consecutive twelve month period beginning on the first day of the calendar year following the Traffic Availability Date and ending on the last day of the calendar year, provided that the final Concession Year shall end on the End Date. Except for the purposes of the Base Contribution, the Base Return Amount, and any other context in which an adjustment is necessary to account for the latter's shorter duration, the term Concession Year is deemed to include the Partial Concession Year.

**"Conditions Precedent for Debt Prepayment"** means, in respect of GNWT exercising its right to repay the Debt and cancel the Loan Documents as set forth in Section 20.1(f), each of the following:

- (a) payment to the Lender of all indebtedness owing to the Lender under the Loan Documents, including all amounts required to make the Lender whole with respect to early redemption features of the Debt and any amounts that the Project Company would otherwise be required to pay to cancel the Loan Documents;
- (b) delivery by GNWT to the Lender of an indemnity (in form and content satisfactory to the Lender, acting reasonably) executed by GNWT pursuant to which GNWT will indemnify and hold the Lender and its respective affiliates, directors, officers, employees, agents, successors and assigns harmless from and against any and all costs, losses, expenses, liabilities or damages sustained or incurred as a result of or in connection with the Debt, the Facility, the Loan Documents or this Agreement; and
- (c) delivery by GNWT to the Lender of a release (in form and content satisfactory to the Lender) executed by GNWT pursuant to which GNWT will fully release,

remise and forever discharge, without qualification or limitation, the Lender and its respective affiliates, directors, officers, employees, agents, successors and assigns from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, claims and demands for damages, monies, losses, indemnity, subrogation, costs, interests, expenses and compensation, whether at law or in equity, including any subrogated claims and demands and any claims and demands arising by way of assignment, indemnity, contribution or other relief over which GNWT ever had, now has or hereafter could, shall or may have against any of them, by reason of, arising from or connected with the Debt, the Facility, the Loan Documents, or this Agreement.

**"Construction Account"** means the account established by the Trustee for the benefit of the Project Company and designated as the "Construction Account", as described in Section 9.3.

**"Construction Contract"** means the Approved contract to be entered into between the Project Company and the Constructor relating to the Construction Work and conforming to the applicable provisions of Schedule 2, Part 3 [Required Terms of Construction Contract] and of this Agreement.

**"Construction GMP"** means the guaranteed maximum price for the Construction Work set out in the Construction Contract.

**"Construction Revenues"** means the aggregate of any Net Ancillary Revenues received or collected prior to the Traffic Availability Date, and interest or other income earned on funds in the Construction Account and also includes any late completion payments paid or payable under the Construction Contract.

**"Construction Work"** means the construction, supply and installation of all elements of the Facility or any portion thereof in accordance with the provisions of the Construction Contract and this Agreement.

**"Constructor"** means the Person Approved by GNWT to enter into the Construction Contract and to perform the Construction Work thereunder.

**"Corridor Lands"** means lands and rights that are:

- (a) adjacent to, over or under the Facility Lands;
- (b) owned, administered or controlled by the Federal Government or GNWT; and
- (c) not leased or granted to the Project Company.

**"Cost Overrun"** means any increase in costs of construction and development of the Facility attributable to any matter, circumstance or event occurring or discovered after the Knowledge Date and includes, as the context requires, Eligible Cost Overruns and Ineligible Cost Overruns.

**"DBRS"** means Dominion Bond Rating Service or its successors.

**"Debt"** means the Base Debt Amount or the Increased Debt Amount, as the case may be.

**"Debt Service"** means all amounts required to be paid by the Project Company under the terms of the Debt, including all financing costs attributable to the Debt, all principal, interest and reserve payments and other charges required to be paid by the Project Company to any Lender, all standby, commitment, guarantor, appraisal, administrative, consulting and legal fees associated with the Debt, and all costs and expenses of the Lender incidental to or which relate to the Debt, including the taking of any action or proceeding to enforce remedies provided to the Lender in the documents relating to the Debt.

**"Debt Service Account"** means the trust account established for the benefit of the Lender by the Trustee and designated as the "Debt Service Account", as described in Section 11.2.

**"Debt Service Payment"** means the Base Debt Service or the Increased Debt Service, as the case may be, for each Concession Year.

**"Deh Cho Bridge Fund"** has the meaning attributed to such term in section 6.1(1) of the Act.

**"Delay Event"** has the meaning attributed thereto in Section 15.1.

**"Delivery Plan"** means the plan and schedule for the delivery of the Development Work, the Design Work or the Construction Work set out in the applicable Project Agreement.

**"Demolition Notice"** has the meaning attributed to such term in Section 4.15.

**"Design Agreement"** means the Approved agreement to be entered into between the Project Company and the Designer relating to the Design Work and conforming to the applicable provisions of Schedule 2, Part 2 [Required Terms of Design Agreement] and of this Agreement.

**"Design GMP"** means the guaranteed maximum price for the Design Work set out in the Design Agreement.

**"Design Work"** means the design of the Facility or any portion thereof in accordance with the provisions of the Design Agreement and this Agreement.

**"Designer"** means the Person Approved by GNWT to enter into the Design Agreement and to perform the Design Work thereunder and, for the purposes hereof, the firms of Jivko Engineering and J.R. Spronken & Associates are deemed to be Approved.

**"Developer"** means the Person Approved by GNWT to enter into the Development Agreement and to perform the Development Work thereunder and, for the purposes hereof, the firm of Andrew Gamble & Associates is deemed to be Approved.

**"Development Agreement"** means the Approved agreement to be entered into between the Project Company and the Developer relating to the Development Work and

conforming to the applicable provisions of Schedule 2, Part 1 [Required Terms of Development Agreement] and of this Agreement.

**"Development GMP"** means the guaranteed maximum price for the Development Work set out in the Development Agreement.

**"Development Work"** means the development obligations set out in the Development Agreement and this Agreement relating to the Design Work, the Construction Work or the Facility or any portion thereof.

**"DIAND"** means the Federal Department of Indian Affairs and Northern Development or any successor thereto.

**"Discriminatory Action"** has the meaning attributed to such term in Section 16.1.

**"Discriminatory Action Compensation"** has the meaning attributed to such term in Section 16.2.

**"Document"** has the meaning attributed to such term in Section 1.5.

**"Effective Date"** means the date of this Agreement.

**"Eligible Cost Overrun"** means, subject to Section 5.1, any Cost Overrun attributable to any matter, circumstance or event occurring or discovered after the Knowledge Date, the amount of which is approved by the PMB (if such matter is within the authority of the PMB pursuant to Schedule 13) or Approved by GNWT, as the case may be, and where the PMB or GNWT, as the case may be, is of the opinion, acting reasonably, that:

- (a) none of the Project Company, the Developer, the Designer or the Constructor, or their respective advisors, as applicable, had actual knowledge of the circumstance, matter or event prior to the Knowledge Date (and, for this purpose, the Project Company, the Developer, the Designer and the Constructor shall be deemed to have actual knowledge of the contents and provisions of the Project Disclosure Documents); and
- (b) none of the Project Company, the Developer, the Designer or the Constructor or their respective advisors, as applicable, should have anticipated such matter, circumstance or event prior to the Knowledge Date using a standard of care that a prudent developer, designer and/or constructor would have exercised in similar circumstances, on similar projects, in similar locations; provided that, for the avoidance of doubt, if after a review of the Project Disclosure Documents, a prudent developer, designer and/or constructor would have undertaken or performed further or other tests, studies or investigations, which, in all reasonable likelihood, would have disclosed the matter, circumstance or event, then the Project Company, the Developer, Designer and/or Constructor shall be deemed to have anticipated such matter, circumstance or event. For greater certainty, an Eligible Cost Overrun includes an Eligible Cost Overrun Project Company Change Request and any early completion bonus payable by the Project Company

to the Constructor under the Construction Contractor for achieving the Traffic Availability Date prior to the Expected Completion Date.

**"Eligible Cost Overrun Project Company Change Request"** means a Project Company Change Request that is approved by the PMB (if such matter is within the authority of the PMB pursuant to Schedule 13) or Approved by GNWT in its Sole Discretion, as the case may be, and is determined by the PMB or GNWT, as the case may be, to otherwise be an Eligible Cost Overrun pursuant to subparagraphs (a) and (b) of the definition thereof.

**"Emergency"** means any condition, state or circumstance not reasonably foreseeable that GNWT, acting reasonably, considers to be a danger to any person or property if not immediately remedied and which will be remedied by the implementation of the work that has been specified in a GNWT Change Order.

**"Encumbrance"** means any mortgage, lien, judgment, execution, pledge, charge, security interest, assignment, sublease, restriction, claim or encumbrance of any nature whatsoever.

**"End Date"** means the date on which the Term expires or is terminated.

**"Enhanced Return Amount"** means, for each Concession Year, the amount (if any), by which the Base Amount exceeds the Annual Requirement and any Additional Funds Outstanding Balance for such Concession Year up to a maximum amount of fifteen percent (15%) per annum of the Invested Equity, as determined as of the last day of such Concession Year.

**"Environmental Laws"** means:

- (a) any and all requirements under or prescribed by the applicable common law and any and all applicable federal, territorial, provincial, regional, municipal or local laws, statutes or ordinances relating to environmental matters, including the *Environmental Protection Act* (Northwest Territories), the *Transportation of Dangerous Goods Act* (Northwest Territories), the *Clean Environment Act* (Northwest Territories), the *Mackenzie Valley Resource Management Act* (Canada), the *Fisheries Act* (Canada), the *Northwest Territories Waters Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canadian Environmental Protection Act* and the *Canadian Environmental Assessment Act*;
- (b) all applicable rules, regulations, protocols, guidelines, procedures, judgments, concessions, grants, franchises, licenses, agreements or any other government requirements, promulgated under or pursuant to any laws referred to in paragraph (a);
- (c) all applicable orders, decisions, environmental assessment conditions and exemptions rendered or imposed by any governmental authority relating to environmental matters; and



- (d) any other applicable laws, rules, regulations, orders or decisions (including, Laws and Regulations) relating to environmental matters.

**"Excess Amount"** means, for each Concession Year, the amount (if any), by which the Base Amount exceeds the Annual Requirement.

**"Excess Lands"** means those portions of the Facility Lands which are not required for the operation, management, maintenance or rehabilitation of the Facility.

**"Expected Completion Date"** means November 1, 2010, which is the date the Constructor has currently scheduled to achieve the Traffic Availability Date

**"Expansion"** means the building of additional lanes, the construction of other structures and the making of other improvements in connection with the Facility, and **"Expand"** and **"Expanded"** have corresponding meanings.

**"Extension"** means the construction of linear additions to the Facility and **"Extend"** and **"Extended"** have corresponding meanings.

**"Facility"** means:

- (a) the two-lane toll bridge, together with bridge approaches on the north and south sides to connect to existing highways, to be located near Fort Providence, as more particularly described in the Facility Description and all improvements (including paving), signage (including all toll bridge entry and exit signage), chattels, machinery, equipment, materials, supplies, tools, appurtenances and fixtures forming a part thereof and used in connection therewith;
- (b) all buildings, erections and structures, whether temporary or permanent, erected or located in, on, under or upon the Facility Lands from time to time, or used in connection therewith, excluding the systems, structures, facilities and equipment comprising or related to the Toll System;
- (c) all other facilities, fixtures, appurtenances and tangible personal property, including inventories of any nature whatsoever contained on or attaching to the Facility Lands from time to time and/or used in connection therewith including any operation/administration centre; and
- (d) all mechanical, electrical and other systems installed or used in connection with any of the foregoing,

and includes the Facility Lands.

**"Facility Description"** means the description of the Facility contained in Schedule 3, Part 1 [Facility Description].

**"Facility Lands"** means, collectively, the GNWT Lands and the Federal Lands, as described in Schedule 3, Part 2 [Facility Lands].

**"Facility Lands Availability Schedule"** means the Facility Lands Availability Schedule described in Schedule 3, Part 3 [Facility Lands Availability Schedule].

**"Facility OMM Standards and Requirements"** means, collectively, those operation, management, maintenance and rehabilitation requirements, specifications, standards, directives, protocols, guidelines, policy statements, manuals and procedures, other than Ministry Safety Standards or Higher Ministry Safety Standards, that are issued, utilized, adopted or developed by GNWT specifically in connection with the Facility, and to be complied with by the Operator in connection with the performance of its duties and responsibilities under the OMM Agreement, as set out in Schedule 4 [Facility OMM Standards and Requirements].

**"Federal Government"** means Her Majesty the Queen in Right of Canada.

**"Federal Lands"** means the portion of the Facility Lands administered and controlled by the Federal Government, as described in Schedule 3, Part 2.

**"Final GNWT Cost Overrun Determination"** has the meaning attributed to such term in Section 5.5.

**"Final Plans and Specifications"** means the final plans, drawings, design reports and specifications for the Facility, as more particularly described in the Design Agreement.

**"Five Year Anniversary Dates"** has the meaning attributed to such term in Section 4.14.

**"Five Year Annual Operating Cost Proposal"** has the meaning attributed to such term in Section 4.14;

**"Force Majeure"** means any event beyond the reasonable control of the party to this Agreement claiming Force Majeure, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, Protest Action, revolution, act of terror, sabotage, civil commotion, interference by civil or military authorities, governmental expropriation or confiscation of property or equipment by any Governmental Authority (other than GNWT), Steel Shortage, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tidal wave, earthquake, weather conditions (including any flooding or ice conditions) of a nature that is not or has not ordinarily or customarily been encountered or experienced at or in the vicinity of the GNWT Lands, the Federal Lands or the Corridor Lands, epidemic, quarantine restriction, stop-work order or injunction issued by a court of public authority having jurisdiction and governmental embargo, general industry-wide strike, labour dispute or other labour protest, in each case, which delays or interrupts the performance of any material obligation under this Agreement, provided that such event is not otherwise specifically dealt with under this Agreement or does not arise by reason of:

- (a) the negligence or wilful misconduct of the Affected Party or those for whom it is in law responsible;
- (b) any act or omission by the Affected Party (or those for whom it is in law responsible) in breach of the provisions of this Agreement;

- (c) any strike, labour dispute or other labour protest involving any Person retained, employed or hired by the Affected Party or any of the Affected Party's Advisors to supply materials or services for or in connection with the Work and any strike, labour dispute or labour protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Affected Party, or any of the Affected Party's Advisors;
- (d) the existence of a Ministry Safety Standard or the introduction of a Higher Ministry Safety Standard;
- (e) any Discriminatory Action; or
- (f) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Affected Party.

**"Fundamental Matters"** means those matters, approvals and consents listed in Schedule 5 [Fundamental Matters] which, in accordance with Section 4.4, are required or permitted to be taken or made by the Project Company only with the Approval of GNWT.

**"GAAP"** means Canadian generally accepted accounting principles applied on a consistent basis at the date on which such generally accepted accounting principles are applied.

**"GMP"** means any of the Development GMP, the Design GMP or the Construction GMP, as the case may be.

**"GNWT"** means the party of the first part and its successors and permitted assigns.

**"GNWT Advisors"** means, collectively, as the context may require, the respective agents, advisors, consultants, engineers, auditors, employees, representatives, contractors, subcontractors and workmen of GNWT and all others for whom GNWT is responsible at law, from time to time, but excludes the Project Company, the Project Company's Advisors, the Developer, the Designer, the Constructor, the Operator and each of their respective advisors.

**"GNWT Change Order"** means a written order prepared by or on behalf of GNWT directing the Project Company to:

- (a) add or perform work in respect of the Facility in addition to that provided for in this Agreement or any of the Project Agreements, including work related to the integration of the Facility with other highways (whether tolled or not);
- (b) dispense with, delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or make other changes to the Work;
- (c) implement and comply with Higher Ministry Safety Standards;
- (d) implement an Expansion or Extension;

- (e) cause the Delivery Plan to be revised; or
- (f) implement amendments, supplements or replacements to Technical Specifications and Standards arising after the Effective Date.

**"GNWT Completed Facilities"** means the facilities completed by GNWT and intended to form part of the Facility as described in Schedule 6 [GNWT Completed Facilities].

**"GNWT Default"** means an event or condition (including an act or omission), the occurrence of which would, with the lapse of time or the giving of notice, or both, become a GNWT Event of Default.

**"GNWT Disclosure Documents"** means those specifications, plans, drawings, designs, studies, tests, reports, documents and materials listed in Schedule 8, Part 1 [GNWT Disclosure Documents] prepared, created or developed by GNWT or the GNWT Advisors and provided by it to the Project Company prior to the Knowledge Date.

**"GNWT Event of Default"** has the meaning attributed thereto in Section 17.3.

**"GNWT Lands"** means the portion of the Facility Lands owned by GNWT as described in Schedule 3, Part 2 [Facility Lands]

**"GNWT Security Agreement"** has the meaning attributed thereto in Section 3.11.

**"Governmental Authority"** means any federal, provincial, territorial, regional or municipal governmental, quasi-governmental, judicial, public or statutory authority, commission, tribunal, agency, department, ministry, body or other entity.

**"Governmental Authorization"** means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization, special lease or other requirement of any Governmental Authority or any utility, whether existing or to be obtained, which is necessary in connection with the Work or any part thereof.

**"Gross Ancillary Revenues"** means the total revenues other than Gross Toll Revenues received or collected by GNWT from any and all sources whatsoever in connection with the operation of the Facility or the Facility Lands, and includes all interest and other income earned on funds in the Payment Account and the revenues received or collected in connection with the utilities installed pursuant to Section 3.10, but expressly excludes the Sublease Payments payable by GNWT to the Project Company pursuant to Article 11, any express exclusion from Gross Ancillary Revenues or Gross Toll Revenues referred to in this Agreement, interest and other income earned on funds in the Construction Account, and also excludes any goods and services taxes, sales taxes, value added taxes, multi-stage taxes or similar taxes to be collected and/or remitted by GNWT or the Project Company in respect of any of the foregoing.

**"Gross Toll Revenues"** means, for each Concession Year, the aggregate of every amount in respect of each vehicle that is subject to a toll to be collected in accordance with the Toll System Protocol, Supply and Management Agreement and which uses the Facility

during such Concession Year but excludes fines, penalties, fees, monies, costs and expenses levied by, charged by or payable to GNWT, except as may be otherwise agreed to in writing pursuant to any agreement between GNWT and the Project Company, and also excludes any goods and services taxes, sales taxes, value added taxes, multi-stage taxes or similar taxes, to be collected and/or remitted by GNWT in respect of any of the foregoing.

**"Handback Standards"** means the handback standards to be attached to the OMM Agreement.

**"Hazardous Substance"** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, liquid waste, industrial waste, hazardous material or hazardous substance which is or becomes regulated by Environmental Laws or which is classified as hazardous or toxic under Environmental Laws.

**"Higher Ministry Safety Standards"** means safety standards, specifications, special provisions, directives, codes, policies, procedures, manuals, guidelines and/or processes of the Ministry of Transportation that constitute a higher level of safety standard than the standards set out in the Ministry Safety Standards existing at the Effective Date.

**"Increased Debt Amount"** means the aggregate of:

- (a) the Base Debt Amount; and
- (b) the Additional Debt Amount,

but excludes any additional amount of Debt to fund Ineligible Cost Overruns.

**"Increased Debt Service"** means the Debt Service payable with respect to the Increased Debt Amount.

**"Ineligible Cost Overrun"** means a Cost Overrun that is determined, in accordance with the provisions of this Agreement, not to be an Eligible Cost Overrun and for greater certainty, an Ineligible Cost Overrun includes any Cost Overrun attributable to any Project Company Change Request that is not an Eligible Cost Overrun Project Company Change Request.

**"Ineligible Cost Overrun Advances"** has the meaning attributed to such term in Section 20.6.

**"Ineligible Cost Overrun Facility"** has the meaning attributed to such term in Section 5.7.

**"Information"** has the meaning attributed to it in Section 10.2.

**"Initial GNWT Cost Overrun Determination"** has the meaning attributed to such term in Section 5.3.

**"Initial Lease Payment"** has the meaning attributed to such term in Section 4.15.

**"Initial Shareholders"** means the Deh Gah Got'ie First Nation and the Fort Providence Métis Council or any member of the Fort Providence Aboriginal community.

**"Interest During Construction"** means interest paid on the Base Debt Amount up until and including December 1, 2010.

**"Interest Rate"** means, at any time, the annual rate of interest paid by GNWT to its lenders on short term borrowings in Canadian funds being currently six (6%) per cent.

**"Invested Equity"** means an amount Approved by GNWT not exceeding five million dollars (\$5,000,000), the evidence of which is Approved by GNWT.

**"Knowledge Date"** means, in respect of each of the Development Work, the Design Work or the Construction Work, the date upon which the applicable Project Agreement, as Approved, is executed and delivered.

**"Land Use Permit"** means the permit granted by the Mackenzie Valley Land and Water Board to the Project Company in the name of GNWT, pursuant to the *Mackenzie Valley Resource Management Act* (Canada), permitting the Project Company, on behalf of GNWT, the right to access and use the Federal Lands for the purpose of constructing the Facility for the period commencing on the Effective Date and ending on the Traffic Availability Date

**"Laws and Regulations"** means any and all requirements under or prescribed by applicable common law and any and all applicable federal, provincial or municipal laws, by-laws, codes, orders, ordinances, rules, regulations or statutes, including Environmental Laws.

**"Lender"** means any party or parties providing the Debt (or any portion thereof, or having any interest therein) to the Project Company and/or holding security for the Debt or any part thereof, this Agreement and/or the Project Agreements and includes an agent, debentureholder or trustee holding a Security Instrument on behalf of such party or parties and may include GNWT.

**"Licensee"** has the meaning attributed to such term in Section 4.15.

**"Limited Notice to Proceed"** means the limited notice to proceed letter agreement dated August 24, 2007 between GNWT and the Project Company.

**"Loan Documents"** means all documents, Security Instruments, certificates, instruments and other assurances delivered or to be delivered to the Lender in respect of the Debt by or on behalf of the Project Company.

**"Loan Default"** means an event or condition (including an act or omission), the occurrence of which would, with the lapse of time or the giving of notice, or both, become a Loan Event of Default.

**"Loan Event of Default"** means an event of default as defined in the Loan Documents.

**"Losses"** means all losses (including actual and estimated losses of Gross Toll Revenues), damages, costs (including administrative costs), expenses, liabilities, judgments, awards, taxes, fines, penalties, charges and amounts paid in settlement (net of insurance proceeds actually received), including:

- (a) reasonable legal fees on a full indemnity basis and reasonable fees or other charges of accountants and other advisors; and
- (b) interest computed on money paid by a Person in respect of any of the foregoing at a variable nominal rate per annum equal on each day to the Average Prime Rate then in effect plus three percent (3%), calculated from the date such payment is made by such Person until the date of demand therefor,

less, and to the extent applicable in the circumstances:

- (c) costs and expenses that the party claiming the Losses would otherwise expend or incur in order to comply with this Agreement and the Project Agreements; and/or
- (d) costs and expenses that the Project Company or GNWT, as the case may be, would otherwise expend or incur in the ordinary course of the performance of the Work or the carrying on of business in the ordinary course.

**"Ministry Safety Standards"** means safety standards, specifications, special provisions, directives, codes, policies, procedures, manuals, guidelines and processes of the Ministry of Transportation that apply to the development, planning, design, construction, operation, maintenance and rehabilitation of the Facility existing at the Effective Date as described in Schedule 7 [Ministry Safety Standards].

**"Moody's"** means Moody's Investors Service, a subsidiary of Moody's Corporation, and its successors.

**"Net Ancillary Revenues"** means, for each Concession Year, Gross Ancillary Revenues for such Concession Year less all fees, costs and expenses incurred or paid in connection therewith for such Concession Year, calculated in accordance with GAAP.

**"Net Interest Costs"** means the aggregate interest costs to be incurred with respect to the Base Debt Amount or the Increased Debt Amount, as the case may be, until the Traffic Availability Date for the Facility in its entirety, less any interest revenue earned on cash balances in the Accounts during such period.

**"No Build Area"** means any area that is one hundred (100) kilometres or less from the Facility Lands.

**"Notice of Discriminatory Action"** has the meaning attributed to such term in Section 16.3.

**"Notice of Dispute"** has the meaning attributed to such term in Section 16.3.

**"OMM Agreement"** means the Operation, Management, Maintenance and Rehabilitation Agreement to be entered into between the Project Company and the Operator relating to the OMM Work and conforming to the applicable provisions of Schedule 2, Part 4 [Required Terms of OMM Agreement] and of this Agreement.

**"OMM Work"** means the operation, maintenance and management of the Facility in accordance with the provisions of the OMM Agreement and this Agreement.

**"Operator"** means the Person Approved by GNWT to enter into the OMM Agreement and to perform the OMM Work thereunder.

**"Original Traffic Forecast"** means the traffic forecast dated July, 2006, prepared by Prolog Canada Inc.

**"Partial Concession Year"** means the period commencing on the Traffic Availability Date and ending on the last day of the calendar year in which the Traffic Availability Date occurs.

**"Partial Concession Year Operating Costs"** means the Base Year Operating Costs multiplied by a fraction having as its numerator the number of days in the Partial Concession Year, and as its denominator, the number three hundred sixty-five (365).

**"Payment Account"** means the trust account established for the benefit of the Project Company and GNWT by the Trustee and designated as the "Payment Account", as described in Section 11.2.

**"Permitted Encumbrance"** means:

- (a) easements and any registered restrictions or covenants that run with the GNWT Lands or the Federal Lands provided that they have been complied with and that they were Approved by GNWT;
- (b) easements, rights of way for, or reservations or rights of others relating to, sewers, water lines, gas lines, pipelines, electric lines, cable television, telegraph and telephone lines, telecommunications services and other similar products or services, provided that they have been complied with, that they were Approved by GNWT and, with respect to the GNWT Lands and the Federal Lands, that they do not, in the aggregate, materially and adversely affect the use thereof for the purposes hereof;
- (c) zoning by-laws, ordinances or restrictions as to the use of real property, and agreements with other Persons registered against title to the GNWT Lands or the Federal Lands, provided that they have been complied with, that they were Approved by GNWT in the case of any zoning by-law, ordinance, restriction or registration which the Project Company voluntarily elects to create or make application for and, with respect to the GNWT Lands and the Federal Lands, that they do not materially and adversely affect the use thereof for the purposes hereof;



- (d) a security interest taken or reserved in personalty forming part of the Facility to secure payment of all or part of its price;
- (e) a security interest taken by a Person who gives value for the purpose of enabling the Project Company to acquire rights in or to personalty which is to form part of the Facility to the extent that the value is applied to acquire such rights;
- (f) a notice of this Agreement registered under Section 25.7,
- (g) inchoate or statutory liens for Taxes or utility rates or charges not at the time overdue;
- (h) inchoate or statutory liens for overdue Taxes or utility rates or charges the validity or amount of which the Project Company is contesting in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens;
- (i) statutory liens (including any deposits to secure same) incurred or deposits made in the ordinary course of operations in connection with worker's compensation, employment insurance and similar legislation;
- (j) liens and privileges arising out of any judgments with respect to which the Project Company intends to prosecute appeals or proceedings for review, but only for so long as there is a stay of execution pending the determination of such appeals or proceedings for review;
- (k) security given by the Project Company to a public or private utility or common carrier or any Governmental Authority when required by such utility, carrier or authority in the ordinary course of operation, which singularly or in the aggregate do not materially detract from the value of the asset concerned or materially impair its use in the operation of the business of the Project Company;
- (l) construction, repair or storage liens arising in the ordinary course of the Project Company's business for sums which are not overdue or the validity or amount of which is being contested in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens;
- (m) good faith deposits made in the ordinary course of business to secure the performance of bids, tenders, contracts (other than for the payment of borrowed money), leases, surety, customs, performance bonds and other similar obligations;
- (n) the rights reserved to or vested in any Governmental Authority by any statutory provision;
- (o) Encumbrances permitted in the Loan Documents and Approved by GNWT; and
- (p) any amendment, extension, renewal or replacement of any of the foregoing.

provided that, with respect to any mortgage, lien, judgment, execution, pledge, charge, security interest, assignment, sublease, restriction, claim or Encumbrance of any nature

whatsoever referred to in subparagraphs (d) through (p), inclusive, that the Project Company voluntarily elects to create, such mortgage, lien, judgment, execution, pledge, charge, security interest, assignment, sublease, restriction, claim or Encumbrance:

- (i) only encumbers the Project Company's Interest;
- (ii) is in good standing and not in default;
- (iii) is for a term not exceeding the Term;
- (iv) will be discharged without cost to GNWT on the End Date; and
- (v) is held by a Person who enters into an agreement with GNWT confirming the foregoing.

**"Permitted Investments"** means:

- (a) direct obligations of the Government of Canada, any province or territory of Canada or, provided the obligation is rated:
  - (i) R1 (mid)(short term) or AA (low)(long term) or better by DBRS;
  - (ii) P-1 (short term) or Aa3 (long term) or better by Moody's;
  - (iii) A-1+ (short term) or AA- (long term) or better by Standard & Poor's; or
  - (iv) if DBRS, Moody's, and Standard & Poor's are no longer providing ratings, an equivalent rating or better from a nationally recognized rating agency designated by GNWT, acting reasonably,or if guaranteed by GNWT, direct obligations of any municipality in the Northwest Territories;
- (b) obligations guaranteed by the Government of Canada, any province or territory of Canada or, provided the obligation is rated:
  - (i) R1 (mid)(short term) or AA (low)(long term) or better by DBRS;
  - (ii) P-1 (short term) or Aa3 (long term) or better by Moody's;
  - (iii) A-1+ (short term) or AA- (long term) or better by Standard & Poor's; or
  - (iv) if DBRS, Moody's, and Standard & Poor's are no longer providing ratings, an equivalent rating or better from a nationally recognized rating agency designated by GNWT, acting reasonably,or if guaranteed by GNWT, obligations guaranteed by any agency of the Northwest Territories;

- (c) deposit receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or endorsed by any Schedule 1 Canadian chartered bank whose unsecured long term indebtedness is rated:
  - (i) R1 (mid)(short term) or AA (low)(long term) or better by DBRS;
  - (ii) P-1 (short term) or Aa3 (long term) or better by Moody's;
  - (iii) A-1+ (short term) or AA- (long term) or better by Standard & Poor's; or
  - (iv) if DBRS, Moody's and Standard & Poor's are no longer providing ratings, an equivalent rating or better from a nationally recognized rating agency designated by GNWT, acting reasonably, and
- (d) Commercial Paper, provided the Commercial Paper is rated:
  - (i) R1 (mid)(short term) or AA (low)(long term) or better by DBRS but for greater certainty cannot be asset backed commercial paper;
  - (ii) P-1 (short term) or Aa3 (long term) or better by Moody's;
  - (iii) A-1+ (short term) or AA- (long term) or better by Standard & Poor's; or
  - (iv) if DBRS, Moody's and Standard & Poor's are no longer providing ratings, an equivalent rating or better from a nationally recognized rating agency designated by GNWT, acting reasonably,

such other securities or investments as GNWT may designate or approve (in its Sole Discretion) from time to time in writing,

in all cases having a term which enables the Project Company to satisfy its reasonably anticipated obligations as they become due and is identified herein and provided that after the Traffic Availability Date for the Facility in its entirety, no investment of any balance of the Accounts shall have a term of longer than one (1) year.

**"Person"** means an individual, corporation, partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department and the heirs, beneficiaries, executors, legal representatives or administrators of an individual.

**"Plans and Specifications"** means all present and future specifications, plans, drawings, information and documentation in relation to the development, design, construction, operation, management, maintenance and/or rehabilitation of the Facility.

**"PMB"** has the meaning attributed to such term in Section 7.1.

**"Pre-Funded Contingency Amount"** means that part of the Base Debt Amount in the approximate amount of ten million dollars (\$10,000,000.00) (exact amount to be specified by GNWT having regard to the condition in Subsection 2.1(c)(i)) to fund the

first ten million dollars (\$10,000,000.00) (or lesser or greater amount equal to the Pre-Funded Contingency Amount as specified by GNWT) of Eligible Cost Overruns.

**"Preliminary Notice"** has the meaning attributed to such term in Section 16.3.

**"Preparatory Work"** has the meaning attributed to such term in Section 5.1.

**"Prime Rates"** means the rates of interest per annum, expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by the five (5) largest Schedule 1 Banks in Canada as the reference rate of interest for the determination of interest rates that such Banks will charge for commercial loans in Canadian Dollars made in Canada, provided that if at any time there are not at least five (5) Schedule 1 Banks in Canada, then "Prime Rates" shall mean the rates of interest per annum, expressed in terms of a year of 365 or 366 days, as the case may be, established from time to time by the remaining Schedule 1 Banks in Canada as the reference rates of interest for the determination of interest rates that such Banks will charge for commercial loans in Canadian Dollars made in Canada.

**"Project Agreements"** means the Development Agreement, the Design Agreement, the Construction Contract and the OMM Agreement, and **"Project Agreement"** means any one of such agreements.

**"Project Company"** means the party of the second part and its permitted successors and assigns.

**"Project Company Change Request"** means a written request prepared by or on behalf of the Project Company for a revision to the Final Plans and Specifications, the Delivery Plan, to add or perform work in respect to the Facility in addition to that provided for in this Agreement or any of the Project Agreements or to dispense with or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work, provided that no Project Company Change Request shall be implemented unless and until it has been approved by the PMB (if such matter is within the authority of the PMB pursuant to Schedule 13) or is Approved in the Sole Discretion by the GNWT, as the case may be.

**"Project Company Cost Overrun Notice"** has the meaning attributed to such term in Section 5.2.

**"Project Company Costs"** means those costs and expenses reasonably and legitimately incurred in operating and administering the Project Company and its business and affairs, and the reasonable fees and expenses of the Project Company's Advisors and solicitors retained for any purpose (including quality assurance/quality control and independent engineering functions), but excludes all Taxes and Debt Service and any cost that is not an Eligible Cost Overrun which results from a judgment, order or award (including an arbitration award) issued against or binding on the Project Company. For greater certainty, costs incurred by the Project Company prior to the Effective Date which otherwise meet the definition set out above are Project Company Costs.

**"Project Company Default"** means an event or condition (including an act or omission), the occurrence of which would, with the lapse of time or the giving of notice, or both, become a Project Company Event of Default.

**"Project Company Default Costs"** means any Losses of GNWT resulting from a Project Company Event of Default.

**"Project Company Disclosure Documents"** means those specifications, plans, drawings, designs, studies, tests, reports, documents and materials listed in Schedule 8, Part 2 [Project Company Disclosure Documents] prepared, created or developed by the Project Company or the Project Company's Advisors prior to the Knowledge Date.

**"Project Company Event of Default"** has the meaning attributed to such term in Section 17.1.

**"Project Company Cost Overrun Notice"** has the meaning attributed to such term in Section 5.2.

**"Project Company's Advisors"** means, collectively, as the context may require, the respective agents, advisors, consultants, engineers, auditors, employees, representatives, contractors, sub-contractors and workmen of the Project Company and all others for whom the Project Company is responsible at law, but excludes GNWT, the GNWT Advisors, the Developer, the Designer, the Constructor, the Operator and each of their respective advisors.

**"Project Company's Interest"** means the right, title and interest of the Project Company in and to the Facility, this Agreement, the Project Agreements, the Plans and Specifications, the Sublease Payments, the Accounts and the monies deposited therein, the Loan Documents and/or the leasehold estate of the Project Company created by this Agreement.

**"Project Company's Interest Value"** has the meaning attributed to such term in 21.2.

**"Project Disclosure Documents"** means, collectively, the Project Company Disclosure Documents, the GNWT Disclosure Documents and the Third Party Disclosure Documents.

**"Proposal Notice"** has the meaning attributed to such term in Subsection 4.14(b).

**"Protest Action"** means any civil disobedience or protest action, including any action taken by any Person or Persons protesting or demonstrating against the carrying out of any part of the Construction Work, which occurs prior to the Traffic Availability Date, and which prevents the Constructor from performing the Construction Work in its entirety or a substantial portion thereof for a period of not less than 180 consecutive days.

**"Proven Return"** has the meaning attributed to such term in Section 16.2.

**"Realty Taxes"** means, for each Concession Year:

- (a) all real property taxes, rates, duties, assessments and payments (including local improvement taxes), imposts, charges or levies, whether general or special, that are levied, rated, charged or assessed against the Facility Lands, the Facility, the lease, the sublease or any part or parts thereof, or the leasehold or other estate of the Project Company created by this Agreement, or upon GNWT by reason of its ownership or other rights in and to the Facility Lands;
- (b) all taxes, rates, duties, levies, assessments, licence fees and other charges, levied, rated, charged or assessed against the Project Company in respect of its use or occupancy of the Facility or the Facility Lands,

in each case arising out of any present or future law, order or ordinance of Canada or of any Government Authority having jurisdiction, and any taxes or other amounts which are imposed in lieu of any such taxes, whether of the foregoing character or not, and whether in existence at the date of execution of this Agreement or not.

**"Required Lands"** has the meaning attributed to such term in Section 4.15.

**"Required Third Party Approvals"** means all approvals required under any Laws and Regulations and all approvals that should be obtained in accordance with prudent business practice in order to permit the development, design, construction, financing, operation, management, maintenance and rehabilitation of the Facility and, without limiting the generality of the foregoing, includes:

- (a) approvals permitting construction and use of the Facility over navigable waters;
- (b) the Land Use Permit;
- (c) authorizations required under the *Fisheries Act* (Canada); and
- (d) water licenses required under the *Mackenzie Valley Resource Management Act* (Canada) and the *Northwest Territories Waters Act* (Canada).

**"Responding Party"** has the meaning attributed thereto in Subsection 14.3(a) and Section 24.2, as the context requires.

**"Resulting Return"** has the meaning attributed to such term in Section 16.2.

**"Retention Notice"** has the meaning attributed to such term in Section 4.15.

**"Restriction on Transfer Agreement"** means the agreement among GNWT, the Project Company and others attached hereto as Schedule 9 [Restriction on Transfer Agreement].

**"Revenues"** means the aggregate of Gross Toll Revenues and Net Ancillary Revenues, in each case received or collected from and after the Traffic Availability Date.

**"Reversion Date"** means the day immediately following the End Date.

**"Revised Toll Rate"** means a toll rate established after the Effective Date in accordance with the Toll System Protocol, Supply and Management Agreement or in accordance with the Act as a result of an Increased Debt Amount.

**"Revised Traffic Forecast"** has the meaning attributed to such term in Section 9.6.

**"Sales Taxes"** means the full amount of all goods and services taxes, sales taxes, value added taxes, multi-stage taxes and any other taxes imposed on a party hereunder in respect of the:

- (a) grant of the lease or sublease hereunder;
- (b) Concession Fee or Sublease Payments, payable by each party under this Agreement; or
- (c) amounts payable by the Project Company under the Project Agreements or otherwise by virtue of its activities as contemplated herein.

**"Security Instrument"** means any agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, executed by the Project Company in favour of a Lender for the purpose of providing security for the Debt and which creates any Encumbrance on or with respect to this Agreement, the Project Agreements or the Facility or any rights or benefits thereunder or therein.

**"Shared Return Amount"** means, for each Concession Year, the amount (if any), by which the Base Amount exceeds the Annual Requirement, the Additional Funds Outstanding Balance and the Enhanced Return Amount for such Concession Year.

**"Sole Discretion"** means sole, absolute and unfettered discretion which may be arbitrarily exercised and in respect of the exercise of which it is not necessary to provide any explanation or rationale whatsoever.

**"Standard & Poor's"** means Standard & Poor's Rating Group or its successors.

**"Steel Shortage"** means a material shortage in the supply of steel cabling, pre-tensioning steel, post-tensioning steel and or structural steel that generally affects the road or bridge construction industry, in Canada as a whole, or the road or bridge operation and maintenance industry in Canada, as a whole, or in either case, a significant sector thereof.

**"Step-In Date"** means the date on which the Project Company receives a Step-In Notice from GNWT under the provisions of Section 18.2.

**"Step-In Expiry Date"** means, in those circumstances where the Step-in Date occurs prior to the Traffic Availability Date, the Traffic Availability Date, and in all other circumstances, the date which is twelve 12 months after the Step-In Date.

**"Step-In Notice"** has the meaning attributed to such term in Subsection 18.2(a).

**"Step-In Period"** means the period commencing on the Step-In Date and ending on the earlier of:

- (a) the Step-In Expiry Date; and
- (b) the date upon which the Termination Event has been remedied by the Project Company to the satisfaction of GNWT, acting reasonably.

**"Sublease Term"** means a term commencing on the Traffic Availability Date and ending on the earliest to occur of:

- (a) the day immediately prior to the Concession Termination Date; or
- (b) the date that this Agreement is terminated under Article 18 or Article 21.

**"Sublease Payments"** has the meaning attributed to such term in Section 11.2.

**"Taxes"** means:

- (a) Realty Taxes,
- (b) all taxes, rates, duties, levies, assessments, licence fees and other charges, levied, rated, charged or assessed against the Project Company in respect of the conduct by it of any business on the Facility Lands; and
- (c) all other taxes which are personal to the Project Company but which are payable by virtue of its activities as contemplated herein, including capital taxes or income taxes of the Project Company,

in each case arising out of any present or future law, order or ordinance of Canada or of any Government Authority having jurisdiction, and any taxes or other amounts which are imposed in lieu of any such taxes, whether of the foregoing character or not, and whether in existence at the date of execution of this Agreement or not.

**"Technical Specifications and Standards"** means any and all designs and/or construction requirements, specifications, standards, directives, protocols, guidelines, policy statements and procedures issued, utilized or adopted from time to time, by GNWT or any Governmental Authority applicable to the Development Work, the Design Work or the Construction Work, or any part thereof, including those requirements, specifications and standards expressly set out or referred to in Schedule 10 [Technical Specifications and Standards], as such requirements, specifications and standards may be amended, supplemented or replaced from time to time by the applicable Governmental Authority.

**"Tender Documents"** has the meaning attributed to such term in Section 4.3.

**"Term"** means the term of this Agreement and of the lease granted pursuant to Section 3.2 which begins on the Effective Date (except in the case of the lease of the Federal Lands which begins on the Traffic Availability Date) and ends on the earlier of:



- (a) the Concession Termination Date; or
- (b) the date that this Agreement is terminated under Article 18 or Article 21.

**"Termination Damages"** has the meaning attributed to such term in Section 21.1.

**"Termination Event"** has the meaning attributed to such term in Subsection 18.1(a).

**"Third Party Disclosure Documents"** means those specifications, plans, drawings, designs, studies, tests, reports, documents and materials listed in Schedule 8, Part 3 which have been prepared, created or developed by third parties (other than GNWT, the GNWT Advisors, the Project Company or the Project Company Advisors) and provided to the Project Company prior to the Knowledge Date.

**"Toll System"** means the toll system for the Facility to be designed, supplied, installed, operated, maintained and managed by GNWT.

**"Toll System Protocol, Supply and Management Agreement"** means the agreement substantially in the form of Schedule 11, to be entered into between the Project Company and GNWT setting out the terms and conditions upon which the Toll System will be designed, supplied, installed, operated, maintained and managed by GNWT.

**"Total Completion"** and **"Totally Completed"** and similar terms, means that the applicable Work has been totally completed in accordance with the provisions of the applicable Project Agreement, in each case as certified in writing by the Project Company to GNWT and subject to the right of GNWT to perform a confirmatory audit.

**"Total Facility Capital Costs"** means, without duplication, the aggregate of:

- (a) the GMP established pursuant to each of the Development Agreement, the Design Agreement and the Construction Contract, and any Eligible Cost Overruns under any of the Development Agreement, Design Agreement and Construction Contract and any amounts otherwise deemed to be or included as an Eligible Cost Overrun pursuant to this Agreement;
- (b) the Project Company Costs until the Traffic Availability Date for the Facility in its entirety; and
- (c) financing fees and other fees and costs associated with arranging, closing, monitoring, administering and enforcing the Debt (other than any Debt advanced in connection with an Ineligible Cost Overrun).

**"Total OMM Costs"** mean, with respect to each Concession Year (or applicable portion thereof), the aggregate of all costs incurred or payable by the Project Company under the OMM Agreement in such Concession Year (or applicable portion thereof) and all Project Company Costs incurred by the Project Company following the Traffic Availability Date in relation to the concession and lease granted by this Agreement.

**"Traffic Availability Date"** and similar terms means with respect to the Facility, subject to the right of GNWT to perform a confirmatory audit, the date upon which the Facility is certified in writing by the Constructor to the Project Company and GNWT to be safe, ready and available to be opened for vehicular traffic use by the public in accordance with all Laws and Regulations and applicable Technical Specifications and Standards.

**"Transfer"** has the meaning attributed to such term in Section 19.1.

**"Trustee"** means one or more trustees designated in writing by the Project Company and Approved by GNWT and, with respect to the Debt Service Account, shall be the indenture trustee named under the Loan Documents or such other trustee as is approved by the Lender.

**"Unaffected Party"** has the meaning attributed thereto in Section 15.2.

**"Unclassified Cost Overrun"** has the meaning attributed thereto in Section 5.2.

**"Unknown Archaeological/Historical Finds"** means Archaeological/Historical Finds the discovery, disposition or handling of which would give rise to or result in an Eligible Cost Overrun.

**"Valuation Notice"** has the meaning attributed to such term in Section 21.2.

**"Work"** means, collectively, the Development Work, the Design Work, the Construction Work and the OMM Work and includes any Work performed pursuant to the Limited Notice to Proceed.

## **1.2 Construction of Agreement**

In this Agreement:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words "include", "includes" or "including" means "include without limitation", "includes without limitation" and "including without limitation"; respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list,
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period shall end on the next Business Day;

- (c) all dollar amounts are expressed in Canadian Dollars;
- (f) any tender of documents or money under this Agreement may be made upon the parties or their respective counsel and money may be tendered by bank draft drawn upon a Schedule I or Schedule II Canadian chartered bank or by negotiable cheque payable in Canadian Dollars and certified by a Schedule I or Schedule II Canadian chartered bank;
- (g) the division of this Agreement into separate Articles, Sections, Subsections, Paragraphs and Schedules, the provision of a table of contents and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (h) unless otherwise defined herein, words or abbreviations which have well known or trade meanings are used herein in accordance with their recognized meanings;
- (i) save as otherwise expressly set out in this Agreement, all monies due and payable hereunder shall bear interest at the Average Prime Rate from the date such monies are due to the date of payment;
- (j) all calculations of dollar amounts, financial reporting and financial statements shall be made or prepared in accordance with GAAP;
- (k) the phrase "the aggregate of", "the total of", "the sum of" or a phrase of similar meaning means "the aggregate (or total or sum), without duplication of"; and
- (l) unless specified otherwise, a reference in this Agreement to an agreement, document or standard (including, for avoidance of doubt, this Agreement, any Ministry Safety Standard and Higher Ministry Safety Standard) at any time refers (subject to all relevant approvals) to that agreement, document or standard as amended, supplemented, restated, substituted, replaced, novated or assigned at such time.

### 1.3 Schedules

The following Schedules form part of this Agreement:

<u>Schedule No.</u>	<u>Schedule Title</u>
1	<b>Terms of Debt</b>
2	<b>Terms of Material Subcontracts</b>
Part 1	Required Terms of Development Agreement
Part 2	Required Terms of Design Agreement
Part 3	Required Terms of Construction Contract
Part 4	Required Terms of OMM Agreement
3	<b>Lands</b>
Part 1	Facility Description
Part 2	Facility Lands

<u>Schedule No.</u>	<u>Schedule Title</u>
Part 3	Facility Lands Availability Schedule
4	<b>Facility OMM Standards and Requirements</b>
5	<b>Fundamental Matters</b>
6	<b>GNWT Completed Facilities</b>
7	<b>Ministry Safety Standards</b>
8	<b>Project Disclosure Documents</b>
Part 1	GNWT Disclosure Documents
Part 2	Project Company Disclosure Documents
Part 3	Third Party Disclosure Documents
9	<b>Restriction on Transfer Agreement</b>
10	<b>Technical Specifications and Standards</b>
11	<b>Toll System Protocol, Supply and Management Agreement</b>
12	<b>Insurance/Risk Management Requirements</b>
13	<b>Project Management Board and Pre-Funded Contingency Amount</b>

#### **1.4 Procedure for Approvals and Consents**

Wherever the provisions of this Agreement require or provide for or permit an approval or consent by GNWT of or to any action, Persons, document, budget, list, plan or other matter contemplated by this Agreement, this Agreement shall (unless the text hereof expressly states that such approval or consent may be unreasonably or arbitrarily withheld or shall be subject to the Sole Discretion of GNWT to give such approval or consent, in which event the provisions of Subsections (c) to (h), inclusive, of this Section 1.4 shall not apply, or unless the text hereof expressly states that the time periods are to be otherwise, in which event this Section 1.4 shall apply but the time periods shall be adjusted accordingly), be deemed to provide that:

- (a) notwithstanding any process related to approvals or consents, GNWT's obligation to make the Sublease Payments pursuant to Subsection 11.3(a) will not be delayed, set-off or reduced in any way (without prejudice to GNWT's right to dispute such Sublease Payment after the Sublease Payment has been paid pursuant to Subsection 11.3(a));

- (b) such request for approval or consent shall be in writing and shall:
  - (i) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as determined by GNWT;
  - (ii) clearly set forth the matter in respect of which such approval or consent is being sought;
  - (iii) form the sole subject matter of the correspondence containing such request for approval or consent; and,
  - (iv) clearly state that such approval or consent is being sought;
- (c) such approval or consent shall be in writing;
- (d) such approval or consent shall not be unreasonably or arbitrarily withheld or delayed;
- (e) GNWT shall, expeditiously after the giving of a notice requesting an approval or consent, and in any event within thirty (30) days, unless a longer period is specified elsewhere in this Agreement or in the notice requesting an approval or consent, advise the Project Company by notice either that it consents or approves, or that it withholds its consent or approval and in which case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by GNWT, of the information or documentation provided;
- (f) GNWT shall be deemed to have given Approval if it does not respond to a notice requesting an approval or consent within the time period referred to in Subsection 1.4(e);
- (g) if the responding notice mentioned in Subsection 1.4(e) indicates that GNWT does not approve or consent (unless such disapproval or withholding of consent is subsequently reversed, in which case, such approval or consent shall be deemed to have been given on the date of the issuance of the applicable responding notice), the Project Company shall promptly take all steps necessary to satisfy the objections of GNWT set out in the responding notice and thereupon, shall resubmit such request for approval or consent from time to time and the provisions of this Section 1.4 shall again apply until such time as the approval or consent of GNWT is finally obtained; and,
- (h) any dispute as to whether or not such consent or approval has been unreasonably withheld or delayed shall be resolved in accordance with the provisions of Article 24.

### **1.5 Approved Documents**

Subject to the other provisions hereof, wherever in this Agreement approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report, Debt and/or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of Section 1.4.

### **1.6 Conflict**

- (a) In the event of any conflict between the Schedules to this Agreement and the other provisions of this Agreement, the other provisions of this Agreement shall take precedence over the Schedules to this Agreement unless otherwise expressly stated in any such Schedule.
- (b) This Agreement may contain provisions which expand on the provisions of the Act, omit provisions which are contained in the Act or otherwise differ from the provisions of the Act. Notwithstanding such expansion, omission or difference, all of the provisions of this Agreement and of the Act are intended to be given full effect according to their terms except to the extent the same are in conflict or inconsistent with each other, in which event, the provisions of the Act shall govern and prevail. Without limiting the foregoing and for the avoidance of doubt, nothing in this Agreement shall be construed as a contracting out of or waiver of any other rights or remedies of GNWT or the Project Company under or pursuant to the Act. This Section 1.6 shall be subject to Section 1.10.

### **1.7 Statements, Certificates**

The notices, plans, statements, certificates, proposals, schedules and/or reports required to be furnished by or on behalf of the Project Company in connection with this Agreement or the Work shall be submitted to GNWT in a format prescribed by this Agreement or otherwise Approved by GNWT and the Project Company shall ensure that the information contained therein is presented fairly and is true, accurate and complete in every material respect as at the dates and for the periods indicated and omits no material fact necessary to make such information or statements or any of them not misleading.

### **1.8 Scope of Work**

With the exception of any Expansion or Extension expressly required by a GNWT Change Order under Section 5.1, the scope of this Agreement is limited to the Work and does not pertain to any other Expansion or Extension of the Facility. The Project Company acknowledges that any such other Expansion or Extension of the Facility shall be undertaken in the Sole Discretion of GNWT, provided that, during the Term, as long as there is no Project Company Default hereunder:

- (a) any contract for the planning, design, development, construction, operation, management, maintenance and rehabilitation of any Expansion or Extension of

the Facility or any portion thereof is first offered to the Project Company (the "Offer");

- (b) the Offer shall specify the price, terms and conditions of such contract;
- (c) the Project Company may accept the Offer within thirty (30) days after receipt thereof by delivering a notice of acceptance to GNWT (the "Notice of Acceptance");
- (d) if no Notice or Acceptance is received by GNWT within such thirty (30)-day period, the Offer shall be deemed to have been refused by the Project Company and GNWT shall be free to award the contract to any other Person on terms and conditions, which, taken as a whole, are not materially more favourable to such Person than the terms and conditions on which the contract was offered to the Project Company; and
- (e) if no contract is awarded to another Person within eighteen (18) months following delivery of the Offer by GNWT to the Project Company, no such contract shall be awarded unless the provisions of this Section 1.8 are again complied with.

#### **1.9 Delegation**

Subject to the provisions in the Restriction on Transfer Agreement, the Project Company and GNWT may upon notice to the other party, delegate to one or more Advisors, the performance, as agent for and on behalf of the Project Company or GNWT, as the case may be, of any obligation, duty, right or remedy to be observed or performed under this Agreement. Following the giving of such notice, the designated Advisor shall have the authority to perform the said obligations, duties, rights and remedies specified in the notice to the same extent as if such obligations, duties, rights or remedies were performed by the Project Company or GNWT, as the case may be. The Project Company or GNWT, as the case may be, shall have the right, from time to time, upon notice to the other party to revoke a delegation previously made to an Advisor and to appoint and designate one or more replacement Advisors to perform the delegated obligations, duties, rights or remedies or to prospectively revoke, in whole or in part, on a temporary or permanent basis, the authority delegated to an Advisor and to exercise such obligations, duties, rights or remedies itself. Notwithstanding any delegation of obligations, duties, rights or remedies hereunder to one or more of the Advisors, each of the Project Company and GNWT, as the case may be, shall be fully responsible for the performance of such obligations, duties, rights or remedies by each Advisor and errors or omissions by any such Advisor shall be deemed to be those of the Project Company or GNWT, as the case may be, hereunder.

#### **1.10 Enactment, Administration, Application and Enforcement of Laws and Regulations by GNWT**

Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of GNWT to enact, administer, apply and enforce Laws and Regulations. Save only for Discriminatory Actions, or unless compensation or other relief is otherwise available or provided for pursuant to Laws and Regulations, the Project Company shall not be entitled to claim or

receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of Laws and Regulations by GNWT.

#### **1.11 References to Territorial Entities**

A reference in this Agreement to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of GNWT shall be deemed to be a reference to the department, ministry, agency, board, commission, corporation or entity of GNWT which, pursuant to Laws and Regulations, has such right, power, obligation or responsibility at the relevant time.

### **ARTICLE 2 CONDITIONS**

#### **2.1 Conditions for the Benefit of GNWT**

All rights, obligations and liabilities of GNWT under this Agreement (including, for greater certainty, under Subsection 11.3(a) and Section 20.6) shall be subject to the satisfaction or waiver of the following conditions on or before the date specified:

- (a) on or before December 31, 2007, the Project Company shall have provided evidence satisfactory to GNWT, acting reasonably, of receipt by the Project Company of the Invested Equity, which may be satisfied by way of cash or a cash equivalent Approved by GNWT;
- (b) on or before December 31, 2007, the Project Company shall have obtained the Required Third Party Approvals on terms and conditions satisfactory to GNWT, acting reasonably, and shall have provided evidence thereof satisfactory to GNWT, acting reasonably;
- (c) (i) on or before December 31, 2007, GNWT shall have Approved the amount, the Lender and the terms and conditions of the Debt as arranged by the Project Company, including the Pre-Funded Contingency Amount and any other facilities to fund Cost Overruns, and (ii) on or before December 31, 2007, the Project Company shall have arranged for the advance of such Debt by the Lender into the Construction Account in accordance with the terms and conditions of the Debt;
- (d) on or before December 31, 2007, the Project Company shall have provided evidence satisfactory to GNWT, acting reasonably that the \$9,040,000.00 credit facilities from the Toronto-Dominion Bank in favour of the Project Company have been fully paid and the security therefor fully discharged and without limitation, GNWT will have received a complete and unconditional release of its guarantee in relation to such credit facilities, in form and substance satisfactory to GNWT, acting reasonably, and the Limited Notice to Proceed will be terminated on terms and conditions satisfactory to GNWT, acting reasonably.
- (e) on or before December 31, 2007, GNWT shall have Approved (i) the form and content of, (ii) the parties to, and (iii) the GMP (if applicable), provided for in each of the Project Agreements, as prepared by the Project Company, and on or



before December 31, 2007, the Project Company shall have entered into such Project Agreements;

- (f) on or before December 31, 2007, GNWT and the Project Company shall have agreed upon the list of Fundamental Matters, each acting reasonably;
- (g) on or before December 31, 2007, GNWT shall have Approved the Final Plans and Specifications; and
- (h) on or before December 31, 2007, (i) each of the Schedules hereto shall have been agreed to by GNWT and the Project Company, each acting reasonably and, to the extent applicable, shall have been executed and delivered by all of the parties thereto, (ii) each of the agreements, security and Encumbrances contemplated in Sections 3.11, 9.3, 11.2, 11.5 and 20.3 shall have been agreed to by the GNWT and the other applicable parties thereto and to the extent applicable, shall have been executed and delivered by all of the parties thereto.

## **2.2 Waiver by GNWT**

The conditions set out in Section 2.1 have been inserted for the exclusive benefit of GNWT. GNWT may waive any condition inserted for its benefit in whole or in part at any time or times by notice to the Project Company. If any condition inserted for the benefit of GNWT has not been satisfied or waived within the applicable time period set out in Section 2.1, GNWT shall give notice of the failure to satisfy the condition to the Project Company and the Project Company shall then have a further period of thirty (30) days following receipt by it of the notice from GNWT within which to satisfy such condition. If any condition referred to in the notice is not satisfied within such thirty (30) day period, GNWT shall give the Project Company a further period of five (5) days following the expiry of such thirty (30) day period, within which to satisfy such condition and if at the end of such further five (5) day period the condition still remains unsatisfied, GNWT may terminate this Agreement immediately upon notice to that effect to the Project Company. This Agreement shall be terminated on the date such notice is deemed to have been sent and received under Section 25.2 and neither party shall be under any further obligation to the other hereunder.

## **2.3 Conditions for the Benefit of Both GNWT and Project Company**

All rights, obligations and liabilities of GNWT and the Project Company under this Agreement shall be subject to and conditional upon the Lender agreeing to advance the Debt on or before December 31, 2007, or such later date as may be mutually agreed upon between GNWT and the Project Company, each acting reasonably.

## **2.4 Good Faith**

Each of the parties shall proceed diligently and in good faith to attempt to satisfy the conditions set out in Sections 2.1 and 2.3 and, without limiting the foregoing, the Project Company shall provide GNWT with regular reports on the status of the conditions set out in Section 2.1 and 2.3.

### **ARTICLE 3 GRANT OF CONCESSION AND LEASE**

#### **3.1 Grant of Concession**

GNWT hereby grants to the Project Company, upon the terms and conditions herein set out, a concession to develop, design, build, finance, operate, manage, maintain and rehabilitate the Facility. The concession shall commence on the Effective Date and continue throughout the Term.

#### **3.2 Lease**

- (a) In order to give effect to the concession granted under Section 3.1:
  - (i) the Mackenzie Valley Land and Water Board has granted the Land Use Permit with respect to the Federal Lands to GNWT to facilitate the development, design and construction of the Facility from the Effective Date to the Traffic Availability Date; and
  - (ii) GNWT hereby demises and leases to the Project Company and the Project Company hereby leases from GNWT:
    - (A) the GNWT Lands as of and from the Effective Date; and
    - (B) the Federal Lands, as of and from the Traffic Availability Date,subject to the terms and conditions set out herein, in an "as-is" condition, to have and to hold during the Term and GNWT makes no representations or warranties with respect to the GNWT Lands or the Federal Lands other than as expressly set out herein.
- (b) The Project Company shall be required to obtain and keep in good standing the Required Third Party Approvals and GNWT shall be required to obtain and keep in good standing all grants, leases, licenses and approvals required in connection with the demise and lease to the Project Company of the Facility Lands, and each party shall keep the other informed of its progress and the status of such Required Third Party Approvals, permits, approvals, grants, leases and licenses throughout the Term.
- (c) Notwithstanding anything to the contrary contained in this Agreement, GNWT shall, subject to Section 3.16 (applied *mutatis mutandis*), be responsible for additional costs arising from the presence of Hazardous Substances not identified in the Project Disclosure Documents.

#### **3.3 Excess Lands**

From time to time at the request of GNWT, the Project Company shall release from the concession and lease herein provided for such Excess Lands as GNWT, in consultation with the Project Company, may designate, acting reasonably, and upon any such designation being made

by GNWT, this Agreement shall cease to apply to such Excess Lands and such Excess Lands shall cease to be Facility Lands for all purposes hereunder. Such release shall not entitle GNWT to any abatement in the payments to be made by it pursuant to Section 11.2. The Project Company shall, in connection with the foregoing, cause any Lender, to execute and deliver (without consideration payable by GNWT) such releases, quit claims, discharges and other instruments as may be reasonably requested or required by GNWT to give effect to the foregoing.

#### **3.4 Reservation of Rights in Favour of Federal Government**

The lease of the Federal Lands herein provided shall be deemed to include all reservations to the Federal Government provided for in Laws and Regulations.

#### **3.5 Quiet Enjoyment**

Subject to the provisions of this Agreement and the performance by the Project Company of its obligations hereunder, the Project Company shall have and may peaceably enjoy and possess the Facility Lands during the Term, without any interruption or disturbance whatsoever from GNWT or any other Person lawfully claiming from or under GNWT.

#### **3.6 Use**

The Facility Lands may only be used by the Project Company for the purpose of the development, design, construction, operation, management, maintenance and rehabilitation of the Facility, and such ancillary uses as may be permitted under this Agreement, subject to compliance with the terms hereof and all Laws and Regulations.

#### **3.7 Concession Fee**

- (a) During the Term, a lease rent and concession fee (the "Concession Fee") shall be payable by the Project Company to GNWT in the amount required pursuant to Laws and Regulations, being \$1.00 per annum.
- (b) Within five (5) Business Days after the final day of each Concession Year of the Term, the Project Company shall pay to GNWT and/or to such other Persons as GNWT may direct, the Concession Fee payable for such year.
- (c) The Project Company shall make the payments set forth in this Section 3.7 without any right of set-off, deduction or abatement whatsoever.

#### **3.8 GNWT Completed Facilities**

As of and with effect on the Effective Date, GNWT hereby transfers, conveys and assigns to the Project Company the GNWT Completed Facilities (but not the Facility Lands in, on, under or upon which GNWT Completed Facilities are located) located upon the Facility Lands that are owned on the Effective Date by GNWT in an "as-is" condition, and GNWT makes no representations or warranties with respect to such GNWT Completed Facilities other than as expressly set out herein. From and after the transfer of the GNWT Completed Facilities and

until the End Date, such GNWT Completed Facilities will be owned by the Project Company as contemplated by Section 3.9.

### **3.9 Ownership of Improvements**

As between GNWT and the Project Company, during the Term, the Facility (excluding the Facility Lands) shall be the separate property of the Project Company and not of GNWT, subject to and governed by all of the provisions of this Agreement. On the End Date, all improvements on the Facility Lands and the Facility shall become the absolute property of GNWT free and clear of any and all Encumbrances, save and except for those Permitted Encumbrances described in paragraphs (a) to (c), inclusive, of the definition of "Permitted Encumbrances", without any payment therefor to the Project Company and without any action whatsoever being taken by GNWT. GNWT's absolute right of property in all improvements on the Facility Lands and the Facility which will arise upon the expiration or termination of this Agreement shall take priority over any other interest in the Facility which may now or hereafter be created by the Project Company, and all dealings by the Project Company with the Facility and any other improvements on the Facility Lands which in any way affect title thereto, shall be subject to this right of GNWT.

### **3.10 Reservation of Rights in Favour of GNWT with Respect to the Facility**

Notwithstanding the lease of the Facility Lands to the Project Company and the use by the Project Company of the Facility Lands for the purposes permitted herein, GNWT shall, subject to the provisions hereof, continue to be able to use the Facility for the following purposes and GNWT hereby reserves unto itself all rights which may be necessary to achieve such purposes:

- (a) Tolling. GNWT shall develop, design, supply, install, operate, maintain, manage and rehabilitate the Toll System in accordance with the Toll System Protocol, Supply and Management Agreement.
- (b) Utilities. Either GNWT or the Project Company may, at its sole cost and expense, and subject to the prior Approval of the other given in accordance with the provisions of Section 1.4, applied *mutatis mutandis*, install, or authorize the installation of, utilities, including water and sewer lines, fibre optic cable and other electronic communications, in, along, under, across or through the Facility Lands. GNWT or the Project Company, as the case may be, shall be deemed not to be unreasonably or arbitrarily withholding approval or consent if the installation or authorization for which approval or consent is requested could be reasonably expected to cause any Losses to the party whose approval or consent is requested. In the installation, maintenance, repair and rehabilitation of such utilities, GNWT shall use its commercially reasonable efforts to minimize any physical disruption to the operation or construction of the Facility or physical damage to the Facility. No such utilities shall be built in such a manner as to prevent or impede the Work or the operation of the Facility.
- (c) Police Services. GNWT shall provide police services, enforcement of vehicle licensing and safety standards, towing, ambulance and emergency vehicle

services on the Facility Lands that are appropriate for the Facility Lands in the same manner and to the same extent as it provides police services, enforcement of vehicle licensing and safety standards, towing, ambulance and emergency vehicle services on highways to which the Facility is connected.

GNWT shall have such easements for access, support, operation, repair, maintenance and rehabilitation as may be necessary for the aforesaid purposes. All revenues earned from the installation of such utilities shall be paid to GNWT and form part of Gross Ancillary Revenues.

### **3.11 GNWT Security Agreement**

At the request of GNWT, the Project Company shall assign to GNWT, in form and substance satisfactory to GNWT, acting reasonably, the Project Company's Interest. Such assignment of the Project Company's Interest shall be as collateral security to GNWT for the performance by the Project Company of its obligations under this Agreement and is referred to herein as the "GNWT Security Agreement". The Project Company shall use commercially reasonable efforts to obtain the consent of all parties as may be required to the said assignment of the Project Company's Interest. The Project Company covenants that the Project Company's Interest shall be assignable as security to GNWT for the purposes of the GNWT Security Agreement. GNWT acknowledges that the Project Company's Interest may also be assigned as security to a Lender and that each of GNWT and such Lender shall be entitled to use the Project Company's Interest in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, GNWT shall be entitled to use the Project Company's Interest in each of the following events:

- (a) If GNWT terminates this Agreement pursuant to Article 18; or
- (b) If GNWT elects to use all or any part of the Project Company's Interest to remedy a Project Company Event of Default, a Loan Default, a Loan Event of Default or a default under any of the Project Agreements.

Notwithstanding the foregoing, in the event that any such Lender has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 20, and is using all or part of the Project Company's Interest in respect of the development, design, construction, operation, management, maintenance or rehabilitation of the Facility, GNWT shall not be entitled to use all or such portion of the Project Company's Interest in enforcing its security. It is acknowledged that any assignment of the Project Company's Interest to a Lender shall have priority over the GNWT Security Agreement. At the request of GNWT, the Project Company shall promptly deliver to GNWT, at the sole cost and expense of the Project Company, forthwith after completion or execution and delivery, a copy of each item evidencing the Project Company's Interest. Notwithstanding anything to the contrary, GNWT shall have no liability or obligation under any of the collateral subject to the GNWT Security Agreement until and unless GNWT exercises its rights to take an assignment thereof and then only in respect of the period of time while same are being held by GNWT.

### **3.12 Rights and Obligations of GNWT with Respect to Corridor Lands**

GNWT shall at all times have control over the Corridor Lands. Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property), the Project Company shall not enter upon the Corridor Lands without the prior Approval of GNWT, which the Project company shall be deemed to have at all times when entering upon the Corridor Lands pursuant to and in accordance with the terms of this Agreement.

### **3.13 Payment of Taxes**

The Project Company shall pay when due all Taxes and Sales Taxes which are payable in respect of:

- (i) the operations at, occupancy of, or conduct of business in or from the Facility; and,
- (ii) fixtures or personal property included in the Facility,

provided that GNWT shall be responsible for any Sales Taxes that the Project Company is required to pay with respect to the transfer of the GNWT Completed Facilities and any Realty Taxes that the Project Company is required to pay in respect of the Facility or the Facility Lands, and all such amounts shall be included in the Base Amount in respect of the Concession Year in which such Taxes arise.

### **3.14 Right to Contest**

The Project Company shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under Section 3.13 provided that (i) the Project Company has given prior notice to GNWT of each such contest, (ii) no contest by the Project Company may involve the possibility of forfeiture or sale of the Facility, and (iii) upon the final determination of any contest by the Project Company, if the Project Company has not already done so, the Project Company shall pay the amount found to be due, together with any costs, penalties and interest.

### **3.15 Utilities**

The Project Company shall pay when due all charges for gas, electricity, light, heat, power, telephone, water and other utilities and services used in or supplied to the Facility during the Term.

### **3.16 Net Agreement**

Except as otherwise expressly provided in this Agreement, this Agreement shall be a completely carefree net agreement to GNWT. GNWT shall not be responsible for and the Project Company shall pay all charges, expenses, payments, costs, claims and liabilities in connection with the Facility or the use of or occupancy of the Facility Lands, except as otherwise expressly provided in this Agreement.

**3.17 No Re-Entry**

Unless expressly so stated in writing by GNWT, any entry by GNWT onto the Facility required or permitted under this Agreement shall not constitute a re-entry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. In furtherance of the foregoing, GNWT and the GNWT Advisors shall be permitted to enter upon the Facility and any part thereof as may be necessary to exercise any of their rights or remedies under this Agreement.

**ARTICLE 4  
OBLIGATIONS OF THE PROJECT COMPANY**

**4.1 Right to Bring Actions**

Subject to Subsection 23.1(c), the Project Company shall have the right to institute in its name any action or other proceeding for the recovery of damages to the Facility, or for the enforcement of any right as against third parties in respect of the Facility. The Project Company shall give GNWT prior written notice of its institution of any such action or proceeding.

**4.2 Project Company Not Agent**

The parties acknowledge that the Project Company is not an agent of GNWT and the Project Company agrees that any contract entered into by the Project Company will contain an acknowledgement by the other parties thereto that the Project Company is not an agent of GNWT.

**4.3 Tender Documents**

The Project Company shall provide to GNWT:

- (a) for its Approval, any proposed requests for qualifications, requests for expressions of interest, requests for proposals and other tender documents (collectively, the "Tender Documents") to be issued by or on behalf of the Project Company in connection with any Project Agreement required to be entered into pursuant to the provisions of this Agreement in respect of the selection of any Developer, Designer, Constructor or Operator not already deemed to be Approved by GNWT pursuant to the provisions of this Agreement, within a reasonable time prior to the proposed issuance thereof;
- (b) any bids or final proposals received by the Project Company pursuant to the Tender Documents; and
- (c) all evaluations and analysis of the Tender Documents supporting the selection of the Developer, Designer, Constructor or Operator pursuant to any Tender Document.

**4.4 Fundamental Matters**

The Project Company shall not exercise any right, initiate any action, step or proceeding or give any approval or consent for or in respect of any Fundamental Matter, unless the exercise

of such right, the initiation of such action, step or proceeding or the giving of such approval or consent has been Approved by GNWT.

#### **4.5 Development and Operational Responsibility**

The Project Company will enter into each of the Project Agreements in the form and with the parties Approved by GNWT, and will cause the Facility to be developed, designed, constructed, operated, managed, maintained and rehabilitated in accordance with the requirements of the Project Agreements. The Project Company will fully and promptly perform its obligations under the Project Agreements and will do all such things as may reasonably be required to keep the Project Agreements in full force and effect. Subject to the provisions of this Agreement, the Project Company shall have complete control of the Work.

#### **4.6 Enforcement of Rights Under the Project Agreements**

The Project Company will use all reasonable commercial efforts to enforce the obligations of each of the Developer, Designer, Constructor and Operator under the Project Agreements. Upon the occurrence of a "Default" under a Project Agreement with respect to the Developer, Designer, Constructor, or Operator or an event of "Force Majeure" under a Project Agreement, the Project Company shall promptly give notice thereof to the parties to such Project Agreement and shall provide a copy of such notice to GNWT. If a "Default" with respect to the Developer, Designer, Constructor or Operator becomes an "Event of Default" under the applicable Project Agreement, then the Project Company shall take all actions and exercise all remedies as may be available in accordance with the provisions of the relevant Project Agreement or at law, except to the extent, if any, that the Project Company requires the Approval of GNWT to take such action or exercise such remedies pursuant to Section 4.4.

#### **4.7 Termination of Project Agreements**

If any Project Agreement (other than the OMM Agreement) is terminated prior to the Total Completion of the Work provided for therein, the Project Company shall promptly enter into a new agreement with a party or parties Approved by GNWT containing substantially the same terms and conditions (excluding price, which shall be Approved by GNWT, together with any corresponding increase to the Annual Requirement) as are set out in the applicable Project Agreement, it being the purpose and intent of this provision that in order to ensure the proper completion of the Work, until the Work is Totally Completed, the Project Company shall be a party to an agreement as described above. On the termination of the OMM Agreement (whether by reason of an "Event of Default" thereunder or the effluxion of time or otherwise), the Project Company shall promptly enter into a new agreement with a party or parties Approved by GNWT containing substantially the same terms and conditions (excluding price, which shall be Approved by GNWT, together with any corresponding increase to the Annual Requirement) as are set out in the OMM Agreement, it being the purpose and intent of this provision that to ensure the proper operation, management, maintenance and/or rehabilitation of the Facility throughout the Term, the Project Company shall at all times throughout the Term be a party to an agreement as described above. Once entered into, any such new agreement as aforesaid shall become the applicable Project Agreement, for the purposes of this Agreement, and the developer, designer, constructor or operator with whom the Project Company has entered into such new



agreement shall become the Developer, Designer, Constructor or Operator, as the case may be, for the purposes of this Agreement.

#### **4.8 Amendments to Project Agreements**

The Project Company will not terminate or waive any provisions of a Project Agreement, release any party thereto from liability, accept a voluntary surrender thereof or consent to any amendment thereto, in each case, without the Approval of GNWT.

#### **4.9 Facility Opening and Closure**

- (a) During the Sublease Term, the Project Company shall not close or permit to be closed all or any portion of the Facility other than in accordance with the provisions of the OMM Agreement and, subject to the OMM Agreement, the Project Company shall at all times during the Sublease Term permit unrestricted access to the Facility by all vehicles and cause the Facility to be continuously open and operational for use by the public, twenty-four (24) hours a day, every day during the Sublease Term.
- (b) The Project Company shall not permit any portion of the Facility to be used by the public prior to the Traffic Availability Date and shall take all reasonable steps necessary to ensure that this provision is complied with at all times.

#### **4.10 Specifications, Standards and Requirements**

- (a) During the Term, the Project Company shall comply with, and cause the Facility and the development, design, construction, operation, management, maintenance and rehabilitation thereof to be in compliance with, the Final Plans and Specifications, Technical Specifications and Standards and the Facility OMM Standards and Requirements.
- (b) The Project Company shall, if requested by GNWT from time to time, undertake a review of the Technical Specifications and Standards, the Facility OMM Standards and Requirements and, if necessary, update, revise and/or replace the Technical Specifications and Standards and Facility OMM Standards and Requirements as GNWT considers advisable or appropriate pursuant to a GNWT Change Order. The Project Company shall submit under the applicable Project Agreement all "Change Orders" (as defined therein) as may be necessary in connection with any such updates, revisions and/or replacements.

#### **4.11 Selection of Name**

The Project Company may propose a name for the Facility which name shall be subject to the Approval of GNWT in its Sole Discretion. Until such time as the Project Company and GNWT are able to agree upon a name for the Facility, it shall be called the "Dch Cho Bridge".

#### **4.12 No Encumbrances**

Save and except as contemplated by Section 19.2 and under Permitted Encumbrances, the Project Company shall not do any act or thing that will result in any Encumbrance affecting the Facility or the Facility Lands, and shall promptly take such steps so as to remove any such Encumbrance against the Facility or the Facility Lands unless such Encumbrance is a Permitted Encumbrance or came into existence as a result of an act or omission of GNWT. The Project Company, if requested, shall assist GNWT in attempting to remove any Encumbrance which has come into existence as a result of the act or omission of GNWT, provided that GNWT pays the cost of such removal.

#### **4.13 Observance of Laws and Regulations and Required Third Party Approvals**

During the Term, the Project Company shall comply with, and cause the Facility and the development, design, construction, operation, management, maintenance and rehabilitation thereof to be in compliance with, all Laws and Regulations and Required Third Party Approvals. For the avoidance of doubt, nothing in this Agreement shall abrogate or diminish any responsibilities or obligations of the Project Company under any Laws and Regulations or Required Third Party Approvals.

#### **4.14 Preparation of Five Year Annual Operating Cost Proposals**

- (a) The Project Company shall cause to prepare and be provided to GNWT for Approval a proposal (the **"Five Year Annual Operating Cost Proposal"**) at least one hundred and eighty (180) days but not more than three hundred and sixty-five (365) days prior to the end of the fifth (5th) full Concession Year (excluding, for greater certainty, the Partial Concession Year) and every five (5) Concession Years thereafter during the Sublease Term (the **"Five Year Anniversary Dates"**). Each Five Year Annual Operating Cost Proposal shall include the following:
  - (i) the Total OMM Costs for the performance of the OMM Work for the next ensuing five (5)-year period (containing a breakdown of the costs for each such Concession Year); and
  - (ii) such other information as may be reasonably requested by GNWT.
- (b) GNWT shall have sixty (60) days in which to review the Five Year Annual Operating Cost Proposal and within such time shall notify (the **"Proposal Notice"**) the Project Company that:
  - (i) the Five Year Annual Operating Cost Proposal is Approved; or
  - (ii) the Five Year Annual Operating Cost Proposal is not Approved, in whole or in part, together with reasons therefor, in which event GNWT and the Project Company shall, using reasonable commercial efforts, attempt to reach agreement on a modified Five Year Annual Operating Cost Proposal within twenty (20) Business Days following receipt by the Project Company of the Proposal Notice or such other period of time that the

parties may agree to in writing, failing which, the matter shall be resolved pursuant to Article 24.

- (c) If the Project Company and GNWT have not reached agreement regarding any Five Year Annual Operating Cost Proposal prior to the applicable Five Year Anniversary Date or if the Project Company does not provide a Five Year Annual Operating Cost Proposal as required under Subsection 4.14(a), then (i) in the case of the first Five Year Annual Operating Cost Proposal, the Annual Operating Costs for the fifth Concession Year, and (ii) thereafter, the proposal for the last Concession Year of the most recent Five Year Annual Operating Cost Proposal that has been Approved, in each case multiplied by a fraction having as its numerator the Canada CPI as of the date thirty (30) days prior to the Concession Year and as its denominator, the Canada CPI as of the date thirty (30) days prior to the commencement of the last Concession Year for which Annual Operating Costs have been agreed upon or Approved, shall remain in effect until the Five Year Annual Operating Cost Proposal has been Approved by GNWT or otherwise resolved in accordance with Article 24.

#### **4.15 Business Operations**

It is acknowledged that from time to time following the Traffic Availability Date GNWT may grant a lease or licence to a third party and/or the Project Company may propose to GNWT that a lease or licence be granted to a third party (the third party in either case, a "Licensee"), to build or operate on or adjacent to the Facility a business operation that would, in the opinion of GNWT, provide a service to Persons using the Facility. In the case of GNWT, such lease or licence may be granted on such terms and be subject to such conditions that GNWT may, in its Sole Discretion, determine are appropriate in the circumstances and the provisions of Sections 6.1, 6.2 and 6.3 respecting GNWT Change Orders shall apply with respect to the implementation of such lease or license, *mutatis mutandis*. All payments made by the Licensee to GNWT in respect of such business operations shall form part of the Gross Ancillary Revenues, save and except for payments made in connection with the acquisition cost of the Required Lands which shall belong solely to GNWT. In the case of a proposal by the Project Company, such proposal must contain *inter alia*, the following details:

- (a) a specific description of the lands on which the business operation would be located (the "Required Lands");
- (b) the estimated acquisition cost of the Required Lands, if not already acquired;
- (c) the name, background and financial status of the proposed Licensee and a description of the business it would carry on;
- (d) preliminary drawings of the buildings or structures which would be erected to house the proposed business operations;
- (e) a pro forma cash flow statement showing the cash flow with respect to the business operations projected over a period equal to the lesser of 10 years and the term of the proposed lease or license or such shorter or longer period as GNWT may reasonably require; and

- (f) the basic rent, additional rent and percentage rent to be payable by the Licensee.

The Project Company shall provide a copy of any such proposal to GNWT for its Approval. If GNWT Approves a proposal as aforesaid, it shall make all reasonable efforts to acquire the Required Lands, provided that the acquisition cost shall not be greater than that estimated in the proposal. The Required Lands so acquired will, immediately upon their acquisition, be deemed to form a part of the Facility Lands subject to the concession and lease granted to the Project Company hereby, but will not be subject to the sublease provided for in Article 11 and GNWT shall, if required, release such Required Lands from the sublease provided for in Article 11. The Project Company shall sublease the Required Lands to the Licensee pursuant to a sublease, the terms of which shall be Approved by GNWT.

Any Approval granted by GNWT may be made subject to such terms and conditions as GNWT may specify, including any required terms of the sublease between the Project Company and the Licensee. However, at a minimum, the sublease between the Project Company and the Licensee shall (unless GNWT agrees otherwise):

- (a) have a term which is co-terminus with the term of the OMM Agreement, less one (1) day;
- (b) provide for the payment by the Licensee to the Project Company of an initial lease payment (the **"Initial Lease Payment"**) in an amount equal to the acquisition cost of the Required Lands;
- (c) require the Licensee to construct buildings or structures on the Required Lands in accordance with the drawings and designs Approved by GNWT;
- (d) provide for the payment of percentage rent in an amount Approved by GNWT; and
- (e) stipulate that on the termination of or expiration of the sublease, the Project Company shall, by written notice to the Licensee, require either that all buildings, structures and other improvements on the Required Lands be demolished and removed therefrom and the Required Lands be left in the state and condition which they were in at the commencement of the sublease, all at the cost and expense of the Licensee and in accordance with all Laws and Regulations (a **"Demolition Notice"**), or that all buildings, structures and improvements on the Required Lands be left on the Required Lands in a good and operable condition to become the separate absolute property of GNWT, free and clear of any and all Encumbrances, save and except for Permitted Encumbrances which existed at the commencement of the sublease, without any payment therefor to the Licensee (a **"Retention Notice"**). The Project Company shall issue either a Demolition Notice or a Retention Notice as directed by GNWT.

The Project Company shall not terminate or waive any provisions of, release any party thereto from liability, accept a voluntary surrender of, consent to any amendment to, or give any consent or approval under, the sublease with the Licensee without the Approval of GNWT. All payments made by the Licensee to the Project Company under the sublease shall be considered

to form part of the Gross Ancillary Revenues, save and except for the Initial Lease Payment which shall belong solely to GNWT.

GNWT agrees that if so requested by a Licensee, it shall enter into an agreement with the Licensee wherein it will agree to enter into a direct lease with the Licensee having the same terms and conditions as are contained in the sublease between the Project Company and the Licensee should the lease between GNWT and the Project Company granted hereby be terminated for any reason prior to the termination of the sublease between the Project Company and the Licensee, provided that at the time of the termination the Licensee is not in default and is in good standing under its sublease.

#### **4.16 Commencement and Completion**

The Project Company covenants and agrees that the Commencement of Construction shall occur on or before September 28, 2007, and the Traffic Availability Date, shall occur on or before December 1, 2010, unless otherwise agreed to by GNWT and the Project Company in writing pursuant to Section 25.9.

### **ARTICLE 5 COST OVERRUNS**

#### **5.1 Mitigation**

Each Cost Overrun and any matter, circumstance or event giving rise to a Cost Overrun (including any Unknown Archaeological/Historical Finds, to the extent applicable), shall be administered, managed and dealt with by the Project Company such that any costs and delays associated therewith are minimized to the extent reasonably practicable in the circumstances, and all available rights and remedies against Persons (other than GNWT) or under bonds, insurance, security and other assurances with respect to the Cost Overrun are exercised and pursued with all due diligence. Any proceeds derived from the exercise of such rights and remedies shall be applied to reduce the amount of the Cost Overrun.

#### **5.2 Notice**

Within thirty (30) days of it becoming aware of a Cost Overrun, the Project Company shall give GNWT and the PMB notice (a "Project Company Cost Overrun Notice") of such Cost Overrun, which notice shall include the following:

- (a) a description of the Cost Overrun, the amount thereof and the circumstances in which it arose, together with any documentation reasonably necessary to support the characterization of the Cost Overrun as an Eligible Cost Overrun;
- (b) an analysis of any other impact that the Cost Overrun will have upon the performance by the Project Company of its obligations under this Agreement or the Project Agreements; and
- (c) details of the proposed steps to be taken by the Project Company to mitigate the effect of the Cost Overrun.

Until the final status of the Cost Overrun as an Eligible Cost Overrun or Ineligible Cost Overrun is determined pursuant to this Article or Schedule 13, as the case may be, it shall be considered an **"Unclassified Cost Overrun"**. If a Cost Overrun occurs and the Project Company fails to give GNWT and the PMB a Project Company Cost Overrun Notice that meets the requirements of this Section 5.2, then the Cost Overrun shall be deemed for all purposes to be an Ineligible Cost Overrun.

### **5.3 GNWT Declaration**

Subject to Schedule 13, within thirty (30) days following receipt by GNWT of the Project Company Cost Overrun Notice, GNWT will notify the Project Company (the **"Initial GNWT Cost Overrun Determination"**) as to whether, in its opinion, acting reasonably, the Unclassified Cost Overrun is an Eligible Cost Overrun or an Ineligible Cost Overrun, and:

- (a) If the Initial GNWT Cost Overrun Determination is that the Unclassified Cost Overrun is an Ineligible Cost Overrun, GNWT shall provide the Project Company with reasons for its decision and any documentation supporting its decision, if applicable; and
- (b) If the Initial GNWT Cost Overrun Determination is that the Unclassified Cost Overrun is an Eligible Cost Overrun, then the provisions of this Agreement pertaining to Eligible Cost Overruns shall apply.

### **5.4 Further Submission by Project Company**

If, in the Initial GNWT Cost Overrun Determination, GNWT determines that an Unclassified Cost Overrun is an Ineligible Cost Overrun, the Project Company may, within fifteen (15) days following receipt of the Initial GNWT Cost Overrun Determination, make a further submission to GNWT setting out additional documentation and analysis supporting the Project Company's characterization of the Unclassified Cost Overrun as an Eligible Cost Overrun, failing which, the Project Company will be deemed to have accepted GNWT's determination, and in that case, the Cost Overrun shall be considered to be an Ineligible Cost Overrun.

### **5.5 Final GNWT Cost Overrun Determination**

Within fifteen (15) days following receipt from the Project Company of the further submission described in Section 5.4, if any, GNWT shall make a final determination as to whether the Unclassified Cost Overrun is an Eligible Cost Overrun or an Ineligible Cost Overrun (the **"Final GNWT Cost Overrun Determination"**) and, subject to the right of the Project Company to refer the Final GNWT Cost Overrun Determination to the dispute resolution process set out in Article 24, the decision of GNWT shall be final and binding on the parties. Pending the final resolution of any dispute which has been referred to the dispute resolution process in Article 24, the parties shall treat the Cost Overrun as if it were an Ineligible Cost Overrun.

### **5.6 Funding of Ineligible Cost Overruns and Unclassified Cost Overruns**

The Project Company shall fund Ineligible Cost Overruns and Unclassified Cost Overruns from its own resources or, with the approval of GNWT, by debt or other borrowings,

and subject to Section 19.2, the Project Company shall be entitled to grant any lender advancing funds in connection with an Ineligible Cost Overrun or an Unclassified Cost Overrun, a security interest in the Project Company's entitlement to the Base Return Amount and/or Enhanced Return Amount, as collateral security for the repayment of such indebtedness.

#### **5.7 Ineligible Cost Overrun Facility**

The Project Company will arrange for a loan facility to fund Ineligible Cost Overruns in an amount up to three million dollars (\$3,000,000) (the "**Ineligible Cost Overrun Facility**") on or before the date for satisfaction of the condition set out in Subsection 2.1(c)(i).

#### **5.8 Funding of Eligible Cost Overruns**

The Parties acknowledge and agree that the Pre-Funded Contingency Amount shall be utilized to fund the first \$10,000,000 (or lesser or greater amount equal to the actual Pre-Funded Contingency Amount as specified by GNWT) of Eligible Cost Overruns. Eligible Cost Overruns in excess of the Pre-Funded Contingency Amount shall be funded by GNWT or by Additional Debt Amount(s) as determined by GNWT in its Sole Discretion.

#### **5.9 Interest During Construction**

The Parties acknowledge and agree that any Interest During Construction in excess of that placed in the Debt Service Account from the Loan Proceeds will be deemed an Eligible Cost Overrun. In addition, any interest earned on funds in the Debt Service Account before December 2, 2010 will be transferred to the Construction Account at the end of each month.

### **ARTICLE 6 CHANGE**

#### **6.1 GNWT Change Orders**

GNWT may at any time or times during the Term issue a GNWT Change Order to the Project Company. Prior to implementation of such GNWT Change Order, GNWT and the Project Company shall jointly determine:

- (a) whether the GNWT Change Order will require an expenditure of time and/or money by the Project Company in order to perform the work reasonably necessary in connection with the evaluation and costing of the implementation of the GNWT Change Order (the "**Preparatory Work**") and, if so, GNWT will reimburse the Project Company for the reasonable costs incurred by the Project Company in connection with the Preparatory Work;
- (b) whether the GNWT Change Order will impact the timing of performance and obligations under this Agreement or any of the Project Agreements, and, if so, the parties will determine the manner and extent to which the timing of performance and obligations under this Agreement or the Project Agreements should be adjusted or otherwise altered, if at all;

- (c) the amount required to be paid by GNWT to implement the GNWT Change Order and the timing of payment therefor; and
- (d) any other material terms of the GNWT Change Order.

## **6.2 Determination**

If the parties cannot agree:

- (a) as to whether the Preparatory Work will require a material expenditure of time and/or money;
- (b) as to whether the GNWT Change Order will impact the timing of performance and obligations under this Agreement;
- (c) as to the amount required to implement the GNWT Change Order and the timing and frequency of payment therefor; or
- (d) as to any other material terms of the GNWT Change Order,

and GNWT determines, in its Sole Discretion, that the GNWT Change Order is required to be proceeded with because of an Emergency, GNWT in the first instance, shall determine (i) the cost of the Preparatory Work, (ii) the impact on the timing of performance and obligations under this Agreement and/or the Project Agreements, (iii) the amount required to implement the GNWT Change Order, (iv) the timing and frequency of payment therefor, and (v) such other material terms of the Change Order, and shall pay the amount so determined to the Project Company in accordance with the schedule of payment determined by GNWT, subject to final resolution in the manner set out in Article 24, and the Project Company shall, pending such resolution or otherwise being saved harmless in respect thereof by GNWT, nonetheless proceed to implement and perform the GNWT Change Order, including the issuance by the Project Company of the corresponding "Change Order" under the applicable Project Agreements.

## **6.3 Performance of Changes**

Subject to the other provisions of this Article 6, the Project Company shall take steps to ensure that GNWT Change Orders are diligently complied with and implemented in such manner that the costs and delays relating thereto are minimized.

## **6.4 Payment for GNWT Change Orders**

GNWT shall pay the amount required to implement the GNWT Change Order in accordance with the schedule of payment determined pursuant to Subsection 6.1(c) or Subsection 6.2(c), as the case may be.

## **6.5 Inter-Agency Agreements**

GNWT shall have the right, as often as it deems necessary or advisable, to make reciprocal arrangements and enter into agreements with the government of a province or territory of Canada or a State of the United States of America or other Persons in such jurisdictions,



including the Federal Government, providing for the collection of tolls and any matter related to their collection. Upon making such arrangement or agreement that affects the Facility or the Project Company, GNWT shall notify the Project Company and shall provide the Project Company with appropriate and relevant details relating to such arrangement or agreement. GNWT may issue a GNWT Change Order, when required, to implement compliance with such arrangement or agreement.

#### **6.6 Project Company Change Request**

The Project Company shall submit or cause to be submitted all Project Company Change Requests to (i) the PMB for its approval, if such matter is within the authority of the PMB pursuant to Schedule 13 or (ii) to GNWT for Approval (which Approval can be given or withheld in the Sole Discretion of GNWT), as the case may be, and in any case, together with all appropriate supporting documentation. No Project Company Change Request shall be implemented or incorporated as part of the Work unless and until such Project Company Change Request has been (i) approved by the PMB if such matter is within the authority of the PMB, pursuant to Schedule 13 or (ii) Approved by GNWT (which Approval can be given or withheld in the Sole Discretion of GNWT), as the case may be. For greater certainty, any Project Company Change Request that results in a Cost Overrun and that is not an Eligible Cost Overrun Project Company Change Request shall be for the sole cost and account of the Project Company in accordance with Section 5.6 hereof and with respect to any Project Company Change Request that is approved by the PMB or GNWT pursuant to the provisions hereof and which results in a net cost savings with respect to the Construction Work (as determined by the PMB or GNWT, as the case may be, as part of its Approval of the Project Company Change Request), the Project Company shall be entitled to share such net cost savings with the Constructor on a 50/50 basis.

### **ARTICLE 7 PROJECT MANAGEMENT BOARD**

#### **7.1 Establishment of PMB**

In order to ensure the effective management of the Development Work, Design Work and Construction Work, the parties agree to establish a project management board (the "PMB") to oversee the development, design and construction of the Facility, having the representation, authority and responsibilities set out in Schedule 13 Project Management Board. The parties acknowledge and agree that the establishment of the PMB is a condition to GNWT agreeing to the Pre-Funded Contingency Amount.

### **ARTICLE 8 MINISTRY SAFETY STANDARDS**

#### **8.1 Compliance with Ministry Safety Standards**

The Project Company shall cause the Facility to comply with all Ministry Safety Standards. Without limiting the foregoing, in no event shall the Project Company be entitled to claim that a Discriminatory Action has resulted from the existence or introduction of or change to a Ministry Safety Standard or, in the absence of any agreement to the contrary, claim that any such event or action relieves the Project Company from compliance with any Ministry Safety Standard in accordance with the provisions of this Article 8. The Facility shall be deemed to

comply with Ministry Safety Standards existing at the Effective Date, if it is developed, designed, built, updated, managed, maintained and rehabilitated in accordance with the Project Agreements Approved by GNWT pursuant to Section 2.1. Any changes to a Ministry Safety Standard from and after the Effective Date shall be the subject of a GNWT Change Order and the provisions of Article 6 shall apply with respect thereto.

## **8.2 Permitted Equivalent Safety Standards**

Notwithstanding anything to the contrary contained herein, with the Approval of GNWT, the Project Company, at its cost and expense, may implement and comply with safety standards other than the Ministry Safety Standards with respect to the Facility if, in the Sole Discretion of GNWT, the proposed safety standards provide equivalent or increased safety protection to that which would have been provided by the applicable Ministry Safety Standards.

In connection with the foregoing, if the Project Company, at its cost and expense, wishes to implement and use safety standards other than the Ministry Safety Standards, the Project Company must provide notice of such proposal to GNWT accompanied by its reasons for such proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as may be reasonably required by GNWT in support of the Project Company's assertion that the proposed safety standards would provide equivalent or increased safety protection to that which would have been provided by the applicable Ministry Safety Standard. For the avoidance of doubt, (i) the Approval of GNWT referred to herein may be withheld in the Sole Discretion of GNWT, and (ii) unless and until GNWT provides its express Approval for the implementation of the Project Company's proposed safety standards, the Project Company shall not implement the proposed safety standards and shall implement and comply with the Ministry Safety Standards.

## **8.3 Failure to Comply**

- (a) Subject to Subsection 8.3(d), if, at any time, the Project Company fails to comply with any Ministry Safety Standards or GNWT and the Project Company cannot reach an agreement regarding the interpretation or application of a Ministry Safety Standard within a period of time acceptable to GNWT, acting reasonably, GNWT shall have the absolute right and entitlement to undertake any work required to ensure implementation of and compliance with Ministry Safety Standards as interpreted or applied by GNWT.
- (b) To the extent that any work done pursuant to Subsection 8.3(a) is undertaken by GNWT and is necessary to ensure implementation of and compliance with Ministry Safety Standards existing at the Effective Date, the cost of such work plus an administration fee equal to fifteen percent (15%) of the cost of such work, shall be paid by the Project Company to GNWT on demand, without any days of grace, and, failing payment, shall be deemed to form part of the Additional Funds Outstanding Balance and shall be paid to GNWT in accordance with the provisions of Section 11.3.
- (c) To the extent that any work done pursuant to Subsection 8.3(a) is undertaken by GNWT and is necessary to ensure implementation of and compliance with

Ministry Safety Standards introduced following the Effective Date, (i) the cost of the portion of such work performed in order to comply with Ministry Safety Standards existing as at the Effective Date, if any, shall be paid by the Project Company to GNWT on demand, without any days of grace, and, failing payment, shall be deemed to form part of the Additional Funds Outstanding Balance and shall be paid to GNWT in accordance with the provisions of Section 11.3, and (ii) GNWT shall be responsible to pay the incremental costs of the additional work required in order to implement Ministry Safety Standards to the extent they differ from the Ministry Safety Standards existing as at the Effective Date.

- (d) Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable judgment of GNWT the failure of the Project Company to comply with any Ministry Safety Standards results in an Emergency, and if the Project Company is not then diligently taking all necessary steps to rectify or deal with said Emergency, GNWT may, in addition and without prejudice to its other remedies (but without obligation to do so), (i) immediately take such steps as may be reasonably necessary to rectify said Emergency, in which event the provisions of Subsection 18.1(d) shall apply *mutatis mutandis*, or (ii) if and to the extent reasonably necessary to protect persons or property, stop the progress of the Work, and/or close or cause to be closed any and all portions of the Facility affected by the said Emergency, provided that immediately following rectification of said Emergency, as determined by GNWT, acting reasonably, GNWT allows the Work to continue or such portions of the Facility to be reopened, as the case may be.

#### **8.4 Higher Ministry Safety Standards**

If during the Term, GNWT is of the opinion that a Higher Ministry Safety Standard is required or desirable, GNWT may negotiate an agreement with the Project Company to ensure that such Higher Ministry Safety Standard is implemented and complied with in connection with the Facility at the cost of GNWT. If no such agreement is reached within a period of time acceptable to GNWT, acting reasonably, GNWT shall have the right to undertake the work necessary to ensure implementation of and compliance with the Higher Ministry Safety Standard or GNWT may issue a GNWT Change Order with respect thereto. To the extent that such work is undertaken by GNWT, the costs of the portion of the work performed in order to comply with Ministry Safety Standards existing at the Effective Date, if any, shall be paid by the Project Company to GNWT on demand, without any days of grace, and failing payment, shall be deemed to form part of the Additional Funds Outstanding Balance and shall be paid to GNWT in accordance with the provisions of Section 11.3, and GNWT shall be responsible only for the incremental costs of the additional work required in order to implement the Higher Ministry Safety Standards.

## ARTICLE 9 TOLLS AND OTHER REVENUES

### 9.1 Ownership of Revenues

During the Term all Revenues shall be the sole and exclusive property of GNWT, shall form part of the consolidated revenue fund of GNWT, and in the case of the Gross Toll Revenues shall:

- (a) form part of the Deh Cho Bridge Fund; and
- (b) be used only for the purposes set out in the Act.

### 9.2 Tolls

GNWT covenants and agrees to develop, design, supply, install, operate, maintain, manage and rehabilitate the Toll System and in this regard, agrees to enter into the Toll System Protocol, Supply and Management Agreement which agreement shall govern, *inter alia*, the setting of the Base Toll Rate to be charged for any use of the Facility, the timing of the commencement of tolling and the setting of any Revised Toll Rate.

### 9.3 Loan Proceeds

The Project Company shall deposit all loan proceeds received from the Lender in connection with the Debt:

- (a) in an amount equal to the Interest During Construction into the Debt Service Account; and
- (b) the balance of the loan proceeds received from the Lender, together with Construction Revenues and interest and other income earned on monies in the Debt Service Account before December 2, 2010 from time to time, into a separate trust account (to be designated herein as the "**Construction Account**"), established and maintained by the Trustee.

Amounts deposited in the Construction Account shall only be used for the purpose of paying (to the extent of the monies in the account) Total Facility Capital Costs either pursuant to the terms of the Project Agreements (other than the OMM Agreement) or pursuant to the terms of this Agreement, in each case, when due and payable and subject to Schedule 13 with respect to the Pre-Funded Contingency Amount. No other monies shall be deposited into the Construction Account and the funds in the Construction Account will not be co-mingled with other monies. No Encumbrances shall be made or registered against the Construction Account or the monies deposited therein, save and except that to secure the obligations to the Lender and GNWT hereunder, the Project Company and the Trustee shall grant an Encumbrance on all of the monies from time to time in the Construction Account in favour of the Lender and GNWT. Subject to the distribution of any surplus of the Pre-Funded Contingency Amount pursuant to Schedule 13, the amount remaining in the Construction Account following the Total Completion of the Construction Work shall be distributed to GNWT or as it may otherwise direct.

#### **9.4 Permitted Investments**

Amounts from time to time in the Construction Account will be invested by the Trustee in, and only in, Permitted Investments. All interest or other income earned on funds in the Construction Account will form part of the Construction Revenues, will be deposited or re-deposited into the Construction Account and will be used only as contemplated in Section 9.3.

#### **9.5 Payment Agreement**

GNWT, the Project Company, the Lender and the Trustee shall enter into an agreement pursuant to which they shall agree upon the terms and conditions of payment into and out of the Construction Account in order to give effect to the provisions of this Article 9.

#### **9.6 Traffic Reforecast**

If, at a Five Year Anniversary Date, it can be demonstrated, based upon traffic counts performed by GNWT, that the actual traffic volume that is subject to tolls in accordance with the Toll System Protocol, Supply and Management Agreement is at least five percent (5%) less than the traffic volume forecast in the Original Traffic Forecast, then GNWT, at its own expense, will retain an expert with at least ten (10) years experience in professional traffic forecasting to prepare a revised traffic forecast (the "Revised Traffic Forecast").

### **ARTICLE 10 ACCESS, TESTING, INSPECTION, REVIEW AND AUDIT RIGHTS**

#### **10.1 Audits, Assistance, Inspections and Approvals**

Wherever in this Agreement reference is made to GNWT or the GNWT Advisors providing assistance, services, Approvals or consents to or on behalf of the Project Company or the Project Company's Advisors, or to GNWT or the GNWT Advisors performing an Audit or inspecting, testing, reviewing or examining the Facility, the Work or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Project Company or the Project Company's Advisors, such undertaking by GNWT or the GNWT Advisors shall not relieve or exempt the Project Company from, or represent a waiver of, any requirement, liability, Project Company Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on GNWT or the GNWT Advisors not otherwise created or imposed pursuant to the express provisions of this Agreement.

#### **10.2 Furnish Information**

At the request of GNWT, the Project Company shall, at the Project Company's reasonable cost and expense and at any and all reasonable times:

- (a) make available or cause to be made available (and, if requested by GNWT, furnish or cause to be furnished) to GNWT all information relating to the Work, the Invested Equity, the Additional Funds Outstanding Balance, the Accounts,

this Agreement, and/or the Facility (collectively, the "Information") as may be specified in such request and as shall be in the possession or control of the Project Company or any of the Project Company's Advisors; and

- (b) permit GNWT to discuss the obligations of the Project Company under this Agreement, with those directors, officers, employees and managers of the Project Company and the Project Company's Advisors as shall be designated by the Project Company, acting reasonably, to GNWT in writing from time to time.

### **10.3 Inspection, Audit and Review Rights of GNWT**

In addition to the rights set out in Section 10.2, GNWT may, at all reasonable times, upon twenty-four (24) hours' prior notice, cause a GNWT Advisor designated by it to carry out an Audit of the Information and shall be entitled to make copies thereof and to take extracts therefrom, at its expense. The Project Company, at the reasonable cost and expense of the Project Company, shall make available or cause to be made available to GNWT or the designated GNWT Advisor such reasonable information and material as may be required by GNWT or the designated GNWT Advisor for its purposes and otherwise provide such co-operation as may be reasonably required by GNWT or the designated GNWT Advisor.

### **10.4 Inspection of Facility and Work**

GNWT and the GNWT Advisors shall, at all times, have access to the Facility and every part thereof and the Project Company, at the reasonable cost and expense of the Project Company, shall, and shall cause all of the Project Company's Advisors to, furnish GNWT and the GNWT Advisors with every reasonable assistance for inspecting the Facility and/or the Work and to carry out Audits in respect thereof.

### **10.5 GNWT and Others May Perform Tests**

GNWT shall be entitled, at the sole cost and expense of GNWT, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Facility or the Work as GNWT may determine to be reasonably necessary or advisable in the circumstances and the Project Company, at the reasonable cost and expense of the Project Company, shall, and shall cause each of the Project Company's Advisors to, furnish GNWT or the GNWT Advisors with every reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations. For the avoidance of doubt, in connection with the foregoing GNWT and the GNWT Advisors shall be entitled to install machines, equipment, systems, monitors, counters and other devices in, on, under, over or adjacent to the Facility to permit and facilitate any test, study, monitor, review or investigation of or relating to the Work or the Facility.

### **10.6 Inspection, Review, Test and Audit Not Waiver**

Failure by GNWT or the GNWT Advisors to inspect, review, test or Audit the Work, the OMM Work or any part thereof or the Information, shall not constitute a waiver of any of the rights of GNWT hereunder or any of the obligations or liabilities of the Project Company hereunder. Inspection, review, testing or Audit not followed by a notice of Project Company Default shall not constitute a waiver of any Project Company Default or constitute an

acknowledgement that there has been or will be compliance with this Agreement, the Project Agreements and/or Laws and Regulations.

#### **10.7 No Undue Interference**

In the course of performing its inspections, reviews, tests and audits hereunder, GNWT shall use commercially reasonable efforts to minimize the effect and duration of any disruption to the Work having regard to the nature of the inspections, reviews, tests and audits being performed.

#### **10.8 Rights of Project Company to Confirm Revenues and Traffic**

The Project Company shall have access, testing, inspection, review and audit rights, comparable to those set out in this Article, with respect to the verification and audit of the Gross Toll Revenue, Gross Ancillary Revenue, Net Ancillary Revenue and the volume of traffic on the Facility Lands, in accordance with the provisions of the Toll System Protocol, Supply and Management Agreement. For the avoidance of doubt, all reasonable costs and expenses of the Project Company in connection with the access, testing, inspection, review and audit rights referred to in this Section 10.8, shall be deemed to form part of the Total OMM Costs.

### **ARTICLE 11 SUBLEASE AND SUBLEASE PAYMENTS**

#### **11.1 Sublease of Facility to GNWT**

On the Traffic Availability Date, the Facility Lands shall be subleased for the Sublease Term by the Project Company to GNWT and the rest of the Facility shall be leased for the Sublease Term by the Project Company to GNWT, solely for use as a public highway and GNWT shall then have the right and entitlement to grant to the public the right to use the Facility as a public highway and as part of the overall highway network of the Northwest Territories. During the Sublease Term, the Project Company shall be responsible for operating, managing, maintaining and rehabilitating the Facility and in furtherance of the foregoing, will enter into the OMM Agreement and any new agreement required to be entered into pursuant to the provisions of Section 4.7 hereof.

#### **11.2 Sublease Payments**

From and after the Traffic Availability Date, GNWT will pay to the Trustee, amounts (the "Sublease Payments") in respect of each Concession Year (including, for greater certainty, the Partial Concession Year), equal to the Base Amount and, if applicable, the Additional Funds for such Concession Year, which amounts shall be deposited by the Trustee into separate trust accounts established by the Trustee as follows:

- (a) the portion of the Sublease Payments equal to the Debt Service Payment shall be deposited into a separate trust account known as the Debt Service Account; and
- (b) the balance of the Sublease Payments shall be deposited into a separate trust account known as the Payment Account.

If the Traffic Availability Date has not occurred by May 1, 2011 due to a Delay Event, the obligation of GNWT to make the full payment described in Subsection 11.2(a) above shall commence and be continuing from May 1, 2011 as though the Traffic Availability Date had occurred on May 1, 2011. No other money shall be deposited into the Payment Account and other than monies payable to the Lender in respect of a Termination and on account of Interest During Construction, no other money shall be deposited into the Debt Service Account. The funds in the Debt Service Account and the Payment Account, will not be co-mingled with other monies or with each other. No Encumbrances shall be made or registered against the Debt Service Account or the Payment Account or the monies deposited therein, save and except that, to secure the obligations to the Lender and GNWT hereunder, the Project Company and the Trustee shall grant an Encumbrance on all of the monies from time to time in the Debt Service Account and the Payment Account in favour of the Lender and GNWT.

### **11.3 Payment of Sublease Payments**

The Sublease Payments shall be payable as follows:

- (a) that portion of the Sublease Payments equal to the Debt Service Payment will be paid from the Debt Service Account to the Lender as and when amounts are payable to the Lender on account of the Debt Service Payment as set forth in a written notice of the Trustee delivered to GNWT, no less than twenty (20) Business Days prior to the date on which the Debt Service Payment becomes due and payable, and GNWT agrees to make such deposit into the Debt Service Account not later than fifteen (15) Business Days prior to the date on which the Debt Service Payment becomes due and payable. GNWT will not be subject to disputes with the Lender in respect of Debt Service Payments as long as GNWT deposits in the Debt Service Account such amount as set forth in the notice of the Trustee in respect of such Debt Service Payment. Amounts deposited in the Debt Service Account will be invested in Permitted Investments with maturity dates no later than the day before the date of the next Debt Service Payment. From and after December 2, 2010, amounts remaining in the Debt Service Account following a Debt Service Payment will be payable to GNWT together with any interest or other income earned on funds in the Debt Service Account. Disputes between the Trustee or any Lender and GNWT with respect to Debt Service Payments will be subject to the dispute resolution process under Article 24, provided the obligation of GNWT to make the Debt Service Payment in accordance with this Subsection 11.3(a) cannot be delayed, set-off or reduced by the occurrence of such dispute, provided that any such payment by GNWT is deemed to have been made without prejudice to any of its rights to dispute such payment and, without limiting the remedies of GNWT, subsequent Debt Service Payments shall be subject to applicable adjustment and reduction in accordance with the resolution of any such dispute;
- (b) subject to the provisions of Section 18.1, that portion of the Sublease Payments equal to the Annual Operating Costs will be paid to the Project Company by the Trustee from the Payment Account on the last day of each month during each Concession Year by way of a payment to the Project Company of an equal monthly share of the Annual Operating Costs for such Concession Year and



GNWT agrees to deposit such payment into the Payment Account no later than two (2) Business Days prior to the last day of each month during each Concession Year;

- (c) subject to the provisions of Section 18.1, that portion of the Sublease Payments equal to the Base Return Amount will be paid to the Project Company by the Trustee from the Payment Account as and when amounts are payable to the Lender on account of the Debt Service Payment and GNWT agrees to deposit such payment into the Payment Account not later than two (2) Business Days prior to the date on which the Base Return Amount becomes due and payable; and
- (d) subject to the provisions of Section 18.1, if there is an Excess Amount for any Concession Year, then within thirty (30) days following the end of the applicable Concession Year, such Excess Amount shall be paid by GNWT to the Trustee for deposit into the Payment Account and applied by the Trustee in the following order of priority:
  - (i) firstly, to GNWT in payment of the Additional Funds Outstanding Balance;
  - (ii) secondly, to the Project Company in payment of the Enhanced Return Amount, provided that if there is any amounts then outstanding under the Ineligible Cost Overrun Facility, the payment otherwise to be made to the Project Company hereunder shall be paid to the provider of the Ineligible Cost Overrun Facility in payment of the Ineligible Cost Overrun Facility; and
  - (iii) thirdly, to each of GNWT and the Project Company in equal shares, in payment of the Shared Return Amount, provided that if there is any amounts then outstanding under the Ineligible Cost Overrun Facility the payment otherwise to be made to the Project Company herein shall be paid to the provider of the Ineligible Cost Overrun Facility in payment of the Ineligible Cost Overrun Facility.

#### **11.4 Permitted Investments**

Amounts from time to time in the Payment Account will be invested by the Trustee in and only in Permitted Investments. All interest or other income earned on funds in the Payment Account will form part of Gross Ancillary Revenues.

#### **11.5 Payment Agreement**

GNWT, the Project Company, the Lender and the Trustee shall enter into an agreement, pursuant to which they shall agree upon the terms and conditions of payment into and out of the Payment Account in order to give effect to the provisions of this Article 11.

#### **11.6 Sub-sublease**

The Project Company acknowledges and agrees that GNWT may from time to time during the Sublease Term, without the prior consent of the Project Company, sublease or sub-sublease, as the case may be, a portion of the Facility for purposes such as tolling facilities and similar uses that do not interfere with the operation, management, maintenance and rehabilitation of the Facility by the Project Company, provided that if such portion of the Facility is not then subject to the lease or sublease granted by the Project Company to GNWT pursuant to Section 11.1, then the Project Company shall lease or sublease such portion of the Facility to GNWT for the Sublease Term and the provisions of this Section 11.6 shall apply thereto.

#### **11.7 Obligation to Pay**

GNWT acknowledges and agrees that save and except in the case of a termination of this Agreement pursuant to Section 2.2 or Section 2.3, the obligation of GNWT to pay to the Lender by depositing into the Debt Service Account that portion of the Sublease Payments provided for in Subsection 11.3(a) from and after the Traffic Availability Date, is absolute and unconditional without any right of set-off, deduction or abatement whatsoever, including by reason of any damage to or destruction or unavailability due to any cause of all or any part of the Facility, any Project Company Default or failure by the Project Company to fully or partially perform hereunder, the termination of the lease or sublease created in Article 3 and Article 8, respectively, the termination of this Agreement prior to the expiry of the Term save and except in the case of a termination of this Agreement pursuant to Section 2.2 or Section 2.3, or any other circumstances which would, but for this provision, release GNWT or entitle GNWT to be released, from its obligations hereunder. Without limiting the foregoing and for the avoidance of doubt, the damage or destruction by fire or other peril of the Facility or any portion thereof shall not terminate the sublease or entitle GNWT to surrender possession of the premises subleased to it or to demand or receive any deduction or abatement of the Sublease Payments referred to in Subsection 11.3(a) and the obligation of GNWT to make the Sublease Payments from and after the Traffic Availability Date, shall continue in full force and effect in accordance with the provisions of Subsection 11.3(a). This provision and Section 22.2 are inserted for the benefit of the Project Company and, upon the assignment by the Project Company of its rights to the Sublease Payments (or any of them) referred to in Subsection 11.3(a), for the benefit of any such assignee. For the avoidance of doubt, the obligation of GNWT to pay into the Debt Service Account that portion of the Sublease Payments provided for in Subsection 11.3(a) from and after the Traffic Availability Date, shall end on the Concession Termination Date, or such earlier date that the Debt has been fully repaid, and shall be of no further force or effect and the obligation of GNWT to pay any other Sublease Payments shall end upon the End Date and shall be of no further force or effect.

## **ARTICLE 12 REPORTS**

### **12.1 Reports Under Project Agreements**

The Project Company shall promptly:

- (a) provide to GNWT copies of all reports, (including the project monitor's monthly report and any architectural, engineering or consulting reports), notices, tests and certificates delivered to it by the Developer, the Designer, the Constructor or the Operator under the Project Agreements;
- (b) with regard to all other materials delivered to it under the Project Agreements:
  - (i) provide copies in accordance with the provisions of Article 10;
  - (ii) advise GNWT of any material adverse changes disclosed therein relating to the performance of the Work.

### **12.2 Reconciliation Reports**

The Project Company shall provide to GNWT within thirty (30) Business Days following the end of each Concession Year, a full and complete reconciliation of all amounts paid into the Accounts, all disbursements therefrom and a breakdown of all amounts comprising the Additional Funds, the Additional Funds Outstanding Balance, the Annual Operating Costs, the Annual Requirement, the Base Amount, the Base Contribution, the Base Return Amount, the Debt Service, the Invested Equity, the Enhanced Return Amount, the Excess Amount and the Shared Return Amount, in each case, for such Concession Year. The parties shall make any appropriate adjustments to such amounts within thirty (30) Business Days following receipt of the report from the Project Company and the completion of any Audit by GNWT with respect thereto.

### **12.3 Communications with Lenders**

The Project Company shall promptly provide to GNWT copies of all certificates, notices, requests, reports and other material communications which have been delivered or made by the Project Company to any Lender, or which have been received by the Project Company from any Lender.

### **12.4 Bank Statements**

The Project Company shall deliver to GNWT statements showing the amounts in the Accounts within ten (10) Business Days of receipt of such statements from the financial institutions at which such accounts are maintained.

### **12.5 Notice of Claim**

The Project Company shall promptly give notice to GNWT of all material claims, proceedings, disputes (including labour disputes) or litigation in respect of GNWT, the Project

Company or the Work (whether or not such claim, proceeding or litigation is covered by insurance) of which the Project Company is aware or should be aware using all reasonable due diligence. The Project Company shall provide GNWT with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

#### **12.6 Reports under Toll System Protocol, Supply and Management Agreement**

GNWT shall promptly provide to the Project Company, the Lender and the Trustee full monthly reports and annual reconciliation reports with respect to Gross Toll Revenue, Gross Ancillary Revenue, Net Ancillary Revenue and traffic volume. The required content details and timing for the delivery of such reports will be set out in the Toll System Protocol, Supply and Management Agreement.

### **ARTICLE 13 REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

#### **13.1 Representations and Warranties of the Project Company**

The Project Company makes the following representations and warranties to GNWT as of the Effective Date and confirms that GNWT is relying upon such representations and warranties:

- (a) it is a corporation created and validly existing under, and has all necessary corporate authority and power to own its property and carry on its business as presently carried on pursuant to the *Business Corporations Act* (Northwest Territories);
- (b) no steps or proceedings have been taken or are pending to supersede or amend the constituting documents or by-laws of the Project Company in a manner which would impair or limit its ability to carry out its obligations hereunder;
- (c) it has full power, legal right and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms of this Agreement;
- (d) it has taken all necessary corporate action to authorize the creation, execution, delivery and performance of this Agreement and to perform its obligations under this Agreement in accordance with the terms of this Agreement;
- (e) this Agreement constitutes a valid and legally binding obligation of the Project Company enforceable against it in accordance with its terms, subject only to bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the general principles of equity and that equitable remedies, such as specific performance and injunction are available only in the discretion of a court;
- (f) none of the authorization, creation, execution and delivery of this Agreement, nor compliance with or performance of the terms and conditions of this Agreement;

- (i) has resulted or will result in the violation of the constating documents or by-laws of the Project Company or any resolutions passed by its board of directors or a breach or violation of any Laws and Regulations; or
- (ii) has resulted or will result in a breach of, or constitute a default under, any agreement, undertaking or instrument to which the Project Company is a party or by which it or its property or assets is bound;
- (g) except as previously disclosed to GNWT in writing, there is no suit, action, dispute, civil or criminal litigation, claim, arbitration or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review (collectively, "Suits") pending or to the best of its knowledge, information and belief, after due inquiry, threatened against it or relating to this Agreement; and
- (h) except as previously disclosed to GNWT in writing and to the best of its knowledge, information and belief, after due inquiry, there are no facts known to it which are likely to give rise to any such Suits.

### **13.2 Representations and Warranties of GNWT**

GNWT makes the following representations and warranties to the Project Company with respect to itself as of the date of execution of this Agreement and confirms that the Project Company is relying upon such representations and warranties:

- (a) it has full power, legal right and authority to enter into this Agreement, and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with its terms including, for greater certainty, granting the lease of the GNWT Lands and the Federal Lands;
- (b) it has taken all necessary action to authorize the creation, execution, delivery and performance of this Agreement, and to perform its obligations under this Agreement in accordance with the terms of this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of GNWT enforceable against GNWT in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the general principles of equity, subject to the exception that equitable remedies such as specific performance and injunction are not available as against GNWT;
- (d) except as previously disclosed to Project Company in writing, there is no suit, action, dispute, civil or criminal litigation, claim, arbitration or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review (collectively, "Suits") pending or to the best of its knowledge, information and belief, after due inquiry, threatened against it or relating to this Agreement; and

- (c) except as previously disclosed to Project Company in writing and to the best of its knowledge, information and belief, after due inquiry, there are no facts known to it which are likely to give rise to any such Suits.

### **13.3 Disclaimer - GNWT**

Subject to the provisions of Section 13.4:

- (a) GNWT has made available or caused to be made available to the Project Company, the GNWT Disclosure Documents and certain Third Party Disclosure Documents. Except as otherwise expressly provided in this Agreement, GNWT will not have any liability to the Project Company (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of GNWT or any of its respective employees, contractors or agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the GNWT Disclosure Documents or Third Party Disclosure Documents provided to the Project Company by GNWT.
- (b) GNWT does not give any representation, warranty or undertaking that the GNWT Disclosure Documents or the Third Party Disclosure Documents provided by GNWT to the Project Company represent or include all of the information in its possession or control relevant or material to the Facility or the obligations undertaken by the Project Company under this Agreement. GNWT shall not be liable to the Project Company in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Project Company any information, documents or data, nor to keep the GNWT Disclosure Documents or the Third Party Disclosure Documents up to date, nor to inform the Project Company (whether before or after the execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the GNWT Disclosure Documents or the Third Party Disclosure Documents provided by GNWT to the Project Company.
- (c) The Project Company acknowledges, represents, covenants, warrants and confirms that prior to the execution of this Agreement:
  - (i) it has conducted its own analysis and review of the Project Disclosure Documents and has satisfied itself as to the accuracy, completeness and fitness for purpose of all such Project Disclosure Documents upon which it places reliance; and
  - (ii) subject to Subsection 3.2(c) and Article 15, it has satisfied itself as to the nature of the geotechnical, climatic, ground, hydrological, environmental and general conditions of the Facility Lands and the Corridor Lands and the nature of the design, plant and materials necessary for the execution of the Work.
- (d) To the extent that any Project Disclosure Documents indicate the need for further tests, studies or investigations or if GNWT is of the opinion, acting reasonably, that further tests, studies or investigations are required and notifies the Project

Company in writing to that effect, the Project Company covenants and agrees, to perform or cause to be performed such further tests, studies and investigations at its own cost and expense; provided however, that if the further tests, studies or investigations required by GNWT to be carried out by the Project Company prove to be unnecessary because the information, data or results obtained or gathered from such tests, studies and investigations do not alter, in any material respect, the information, data or results previously known to the Project Company from its review of the Project Disclosure Documents or previously obtained or gathered by the Project Company as a result of its own tests, studies and investigations, then GNWT will pay to the Project Company on demand without any days of grace, all Losses incurred by the Project Company in connection with the performance of such tests, studies and investigations.

#### **13.4 Limited Indemnity - GNWT**

- (a) Notwithstanding the provisions of Section 13.3 or any other provision of this Agreement to the contrary, if a delay is caused to the progress of the Work or additional costs are incurred by the Project Company in performing the Work as a direct result of a factual error (as at the currency date of the relevant document) in any GNWT Disclosure Documents upon which the Project Company has relied, then to the extent that the delay or additional costs incurred by the Project Company could not reasonably have been avoided or mitigated by the Project Company, GNWT will:

- (i) indemnify and save harmless the Project Company from and against all claims, demands, actions, suits and proceedings by whomsoever made, brought or prosecuted; and
- (ii) pay to the Project Company on demand, without any days of grace, the amount of any Losses incurred by the Project Company,

in either case, in any manner based upon, arising out of, related to, occasioned by or attributable to such factual error in the GNWT Disclosure Documents and the limitation period in Section 14.2 and the procedures for indemnity claims in Section 14.3 shall apply *mutatis mutandis* to any Claim for indemnification made under this Section 13.4.

- (b) For greater certainty, the Project Company will not be entitled to relief under Subsection 13.4(a):
- (i) for any delay or additional costs that result from a factual error in any of the Project Disclosure Documents, other than the GNWT Disclosure Documents;
  - (ii) for any delay or additional costs that result from any interpretation of or extrapolation from or assumption made on the basis of any information which was factually correct as at the currency date of the relevant GNWT Disclosure Document, or from any action taken or omitted on the basis of any such interpretation, extrapolation or assumption;

- (iii) if it was not, in all the relevant circumstances, having regard to any other information known to the Project Company at the relevant time, reasonable for the Project Company to rely on the information containing the factual error without further tests, studies or investigations, or if GNWT required the Project Company to perform further tests, studies or investigations in connection with the relevant GNWT Disclosure Documents in accordance with Subsection 13.3(d) and the Project Company failed to comply with such requirement; or
- (iv) if the Project Company in fact carried out any further tests, studies or investigations with respect to the subject matter of the information containing the factual error and such further tests, studies or investigations revealed or otherwise disclosed the factual error.

### **13.5 Disclaimer – Project Company**

The Project Company has made available or caused to be made available to GNWT, the Project Company Disclosure Documents and certain Third Party Disclosure Documents. Except as otherwise expressly provided in this Agreement, and without limiting the foregoing, subject to the provisions of Section 13.7, the Project Company will not have any liability to GNWT (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Project Company or any of its respective employees, contractors or agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Project Company Disclosure Documents or Third Party Disclosure Documents provided to GNWT by the Project Company.

### **13.6 Limited Indemnity – Project Company**

- (a) Notwithstanding the provisions of Section 13.5 or any other provision of this Agreement to the contrary, if GNWT suffers a Loss as a direct result of a factual error (as at the currency date of the relevant document) in any Project Company Disclosure Document, the Project Company will:
  - (i) indemnify and save harmless GNWT from and against all claims, demands, actions, suits and proceedings by whomsoever made, brought or prosecuted; and
  - (ii) pay to GNWT on demand, without any days of grace, the amount of any Losses incurred by GNWT,

in either case, in any manner based upon, arising out of, related to, occasioned by or attributable to such factual error in the Project Company Disclosure Documents and the limitation period in Section 14.1 and the procedure for indemnity claims in Section 14.3 shall apply *mutatis mutandis* to any Claim for indemnification made under this Section 13.6.



- (b) For greater certainty, GNWT will not be entitled to relief under Subsection 13.6(a)(i):
  - (i) for any Loss that results from a factual error in any of the Project Disclosure Documents, other than the Project Company Disclosure Documents;
  - (ii) for any Loss that results from any interpretation of or extrapolation from or assumption made on the basis of any information which was factually correct as of the currency date of the relevant Project Company Disclosure Document, or from any action taken or omitted on the basis of any such interpretation, extrapolation or assumption; or
  - (iii) if GNWT carried out any further tests, studies or investigations with respect to the subject matter of the information containing the factual error and such further tests, studies or investigations revealed or otherwise disclosed the factual error.

### **13.7 Dispute**

Any dispute between the Project Company and GNWT regarding the application of Sections 13.3, 13.4, 13.5 or 13.6 will be referred for resolution to the dispute resolution process set out in Article 24.

## **ARTICLE 14 INDEMNIFICATION**

### **14.1 Indemnification by Project Company**

The Project Company shall:

- (a) indemnify and save harmless GNWT against and from all claims, demands, actions, suits and proceedings by whomsoever made, brought or prosecuted; and
- (b) pay to GNWT on demand, without any days of grace, the amount of any Losses incurred by GNWT,

in either case in any manner based upon, arising out of, related to, occasioned by or attributable to:

- (c) subject to Sections 13.5 and 13.6 any material inaccuracy in any representation or warranty made by the Project Company in this Agreement, the Project Agreements or in any document or certificate given by the Project Company pursuant to any such agreements;
- (d) any failure by the Project Company to perform any of its material obligations in this Agreement or the Project Agreements;
- (e) the existence of any defect or dangerous condition in the Work;

- (f) any intentional wrongdoing or negligent act or omission in relation to the Facility, the Facility Lands or the Corridor Lands during the Term by the Project Company or any of the Project Company's Advisors, including any infringement of a patent, copyright, invention or any other kind of intellectual property; or
- (g) any damage to property, either real or personal whether owned by GNWT or others (including any member of the public), howsoever occasioned as a result of the performance of the Work, or any personal or bodily injury to or death of any Person or Persons (including any member of the public), howsoever occasioned by or as a result of the Work,

provided that claims are made in writing within a period of six (6) years from the expiry of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by any limitation statute of the Northwest Territories. Subject to the foregoing, this Section 14.1 shall survive the termination or expiry of this Agreement.

Notwithstanding the preceding sentence, the Project Company's obligations under this Section 14.1 shall not apply to any matter to the extent that such matter is directly attributable to:

- (a) any intentional wrongdoing or negligent act or omission by GNWT or GNWT Advisors or any breach by GNWT of this Agreement; or
- (b) any act or failure to act by the Project Company which is directed by GNWT, if this Agreement requires the Project Company to comply with such direction, and if the Project Company complies with such direction in a manner which is good and workmanlike, appropriate in the circumstances, without any negligence and in compliance with Laws and Regulations.

#### **14.2 Indemnification by GNWT**

GNWT shall:

- (a) indemnify and save harmless the Project Company against and from all claims, demands, actions, suits and proceedings by whomsoever made, brought or prosecuted; and
- (b) pay to the Project Company on demand, without any days of grace, the amount of any Losses incurred by the Project Company,

in either case in any manner based upon, arising out of, related to, occasioned by or attributable to:

- (a) subject to Sections 13.3 and 13.4, any material inaccuracy in any representation or warranty made by GNWT in this Agreement or in any document or certificate given to the Project Company pursuant to any such agreements;
- (b) any failure by GNWT to perform any of its material obligations in this Agreement;

- (c) any intentional wrongdoing or negligent act or omission in relation to the Facility, the Facility Lands or the Corridor Lands during the Term by GNWT or any of GNWT's Advisors;
- (d) any and all land transfer taxes and goods and services taxes payable by the Project Company in connection with the grant of the concession herein provided, the grant of the lease in respect of the GNWT Lands and the Federal Lands herein provided, all improvements on the GNWT Lands or the Federal Lands, the Facility and the registration of the Project Company's Interest; or
- (e) Losses of the Project Company arising from any physical disruption to the operation or construction of the Facility or physical damage to the Facility resulting from the installation, maintenance, repair or rehabilitation of utilities pursuant to Section 3.10,

provided that claims are made in writing within a period of six (6) years from the expiry of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by any limitation statute of the Northwest Territories. Subject to the foregoing, this Section 14.2 shall survive the termination or expiry of this Agreement.

Notwithstanding the preceding sentence, GNWT's obligations under this Section 14.2 shall not apply to any matter to the extent that such matter is directly attributable to any intentional wrongdoing or negligent act or omission by the Project Company or the Project Company's Advisors or any breach by the Project Company of this Agreement.

#### **14.3 Procedures for Indemnity Claims**

- (a) The party (the "**Claiming Party**") having a claim for indemnity (the "**Claim**") against the other party (the "**Responding Party**") pursuant to Section 14.1 or 14.2 shall give written notice to the Responding Party of any such Claim forthwith after receiving notice thereof together with details thereof. Subject to the limitation period set out in Section 14.1 or 14.2, as applicable, if the Claiming Party fails to give such written notice to the Responding Party, such failure shall not preclude the Claiming Party from making such Claim against the Responding Party, but its right to indemnification may be reduced to the extent that such delay prejudiced the defence of the Claim or increased the amount of liability or the costs of the defence.
- (b) The Responding Party shall have the option, by written notice to the Claiming Party given not later than fifteen (15) days after receipt of the notice referred to in Subsection 14.3(a), to assume the carriage and control of the defence, compromise or settlement of the Claim, save and except for Claims against GNWT which affect or may affect public policy with respect to Ministry Safety Standards or the general standard of care pertaining to public highways in the Northwest Territories, which Claims may only be carried, controlled, defended, compromised or settled by GNWT, and which Claims shall not be subject to the provisions of this Section 14.3.

- (c) Upon assumption of control of any Claim by the Responding Party as contemplated by Subsection 14.3(b), the Responding Party shall proceed with the defence, compromise or settlement of the Claim at its sole expense, including, if necessary, employment of counsel and, in connection therewith, the Claiming Party, shall co-operate on a reasonable basis (but at the expense of the Responding Party with respect to any reasonable out-of-pocket expenses incurred by the Claiming Party) to make available to the Responding Party all pertinent information and witnesses under the Claiming Party's control, make such assignments and take such other steps as in the opinion of counsel for the Responding Party, acting reasonably, are reasonably necessary to enable the Claiming Party to conduct such defence. The Claiming Party shall have the right to participate in the negotiation, settlement or defence of any Claim at its own expense and no Claim shall be settled, compromised or otherwise disposed of without the prior written consent of the Claiming Party, such consent not to be unreasonably withheld or delayed. If the Responding Party elects to assume control of the Claim as contemplated by Subsection 14.3(b), the Claiming Party shall not pay, or permit to be paid, any part of the Claim unless the Responding Party consents in writing to such payment or unless the Responding Party, subject to the last sentence of Subsection 14.3(d), withdraws from the defence of such Claim or unless a final judgment from which no appeal may be taken by or on behalf of the Responding Party is entered against the Claiming Party in respect of such Claim.
- (d) If the Responding Party fails to give written notice to the Claiming Party as contemplated by Subsection 14.3(b), the Claiming Party shall, subject to the provisions of the last sentence of this paragraph, be entitled to make such settlement of the Claim, or otherwise deal therewith, as it deems appropriate, acting reasonably, and such settlement or any other final determination of the claim or demand shall be binding upon the Responding Party. If the Responding Party fails to defend or, if after commencing or undertaking such defence, fails to prosecute or withdraws from such defence, the Claiming Party shall have the right to undertake the defence or settlement thereof. If the Claiming Party assumes the defence of any Claim and proposes to settle it prior to a final judgment thereon or to forego any appeal with respect thereto, then the Claiming Party shall give the Responding Party prompt written notice thereof, and the Responding Party shall have the right to participate in the settlement or assume or reassume the defence of such Claim.

## **ARTICLE 15 DELAY EVENTS**

### **15.1 Description of Delay Events**

- (a) For the purposes of this Agreement, "Delay Event" means
  - (i) an event of Force Majeure,

- (ii) a failure to obtain or delay in obtaining any Governmental Authorization provided that such failure or delay could not have reasonably been prevented by technical or scheduling measures of the Project Company;
- (iii) a change to Laws and Regulations arising after the date of this Agreement;
- (iv) delay caused by the performance of works carried out by a Governmental Authority;
- (v) a failure by the Unaffected Party (as defined in Section 15.2 to perform any of its obligations under this Agreement including a failure by GNWT to comply with the provisions of Section 1.4;
- (vi) delay caused by the presence in, on, under or around the Federal Lands or the GNWT Lands of Hazardous Substances, not disclosed in the Project Disclosure Documents;
- (vii) delay caused by the presence in, under or on the Federal Lands or the GNWT Lands of Unknown Archaeological/Historical Finds;
- (viii) delay to the Work caused by the introduction of a Higher Ministry Safety Standard or a change to an existing Ministry Safety Standard after the Effective Date;
- (ix) delay to the Work caused by a requirement to conduct a comprehensive study under the *Canadian Environmental Assessment Act* or a referral to a mediator or a review panel; or
- (x) delay to the Work caused by an Emergency pursuant to Section 8.3(c); or

which results in or would result in a delay or interruption in the performance of any obligation under this Agreement provided that such delay or the cause thereof is not specifically dealt with in this Agreement or does not arise by reason of:

- (A) the negligence or wilful misconduct of the Affected Party (as defined in Section 15.2) or those for whom it is in law responsible;
- (B) any act or omission by the Affected Party (or those for whom it is in law responsible) in breach of the provisions of this Agreement;
- (C) lack or insufficiency of funds or failure to make payment of monies or to provide required security on the part of the Affected Party;
- (D) save and except to the extent such events constitute an event of Force Majeure, any strike, labour dispute or other labour protest involving any Person retained, employed or hired by the Affected Party or any of the Affected Party's Advisors to supply materials or services for or in connection with the Work and any strike,

labour dispute or labour protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Affected Party or any of the Affected Party's Advisors;

- (E) save and except to the extent such events constitute an event of Force Majeure, any weather conditions affecting the Facility whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or
- (F) the economic condition or financial state of affairs of the Northwest Territories or any part of Canada or any other country.

#### **15.2 Notice of Delay Event**

If either GNWT or the Project Company is affected by a Delay Event (the "Affected Party") it shall give notice within ten (10) Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) of the said Delay Event to the other party (the "Unaffected Party"), provided, however, in the case of the same Delay Event being a continuing cause of delay, only one notice shall be necessary. The said notice must include:

- (a) a statement of which Delay Event the claim is based upon;
- (b) details of the circumstances from which the delay arises; and
- (c) an estimate of the delay in the performance of obligations under this Agreement attributable to the said Delay Event and information in support thereof, if known at the time.

The Unaffected Party shall, after receipt of the said notice, be entitled by notice to require the Affected Party to provide such further supporting particulars as the Unaffected Party may reasonably consider necessary.

#### **15.3 Obligation to Mitigate**

As soon as practical after the occurrence of a Delay Event, the Affected Party will take all necessary steps to mitigate the effects of the Delay Event and to remedy the failure to perform, and the relief under this Article 15 will not be available or will cease to be available to an Affected Party if it fails to take all necessary steps to mitigate the effects of the Delay Event and to remedy the failure to perform as aforesaid.

#### **15.4 Notice to Unaffected Party**

The Affected Party shall notify the Unaffected Party within ten (10) Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) that a Delay Event has ceased.

### **15.5 Extension of Time for Completion by Reason of Delay Event**

Subject to the Affected Party giving notice required in Section 15.2, a Delay Event shall excuse the Affected Party from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of Business Days as GNWT and the Project Company jointly determine, each acting reasonably. If GNWT and the Project Company cannot agree upon the period of extension, then either party shall be entitled to refer the matter to the dispute resolution procedure in Article 24. This Section 15.5 shall not excuse the Affected Party from the performance under this Agreement of all obligations not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Affected Party shall continue its performance under this Agreement of all of its obligations to the extent that it is reasonably able to do so and shall use its commercially reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse non-compliance with a change to Laws and Regulations. For greater certainty, nothing in this Section shall affect the obligation of GNWT to deposit Debt Service Payments in the Debt Service Account under Subsection 11.3(a) which obligation shall not be delayed in any event.

## **ARTICLE 16 DISCRIMINATORY ACTION**

### **16.1 Discriminatory Action**

A "Discriminatory Action" shall occur if (i) after the Effective Date, GNWT takes action of any nature whatsoever (including the coming into force or application of any law, by-law, code, order, rule, regulation, policy or statute) or fails to perform its obligations as prescribed by Laws and Regulations including, for the avoidance of doubt, the revocation or repeal, or any amendment having the effect of revoking or repealing, any or all of the provisions of the Act, (ii) the effect of such action or failure to perform is principally borne by the Project Company, (iii) such action or failure to perform materially and adversely affects the value of the Project Company's Interest, except where such action or failure to perform is in response to any act or omission on the part of the Project Company which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Action), or is in the nature of a remedy permitted hereunder which is in response to a Project Company Default or Project Company Event of Default, or a default by any of the Developer, the Designer, the Constructor or the Operator, or such action or failure to perform is otherwise permitted under this Agreement. Notwithstanding the preceding sentence, none of the following shall be a Discriminatory Action:

- (a) an imposition of or an increase in taxes of general application;
- (b) the development, construction or operation of any mode of transportation, including a highway, bridge, or ferry, that may result in the reduction of Gross Toll Revenues or in the number of vehicles using the Facility, provided however, that for the avoidance of doubt, the development, construction or operation by GNWT of such mode of transportation within the No Build Area at any time during the Term shall constitute a Discriminatory Action;

- (c) the application or enforcement of Laws and Regulations in effect on the Effective Date (including successor Laws and Regulations which are not materially more onerous than the applicable predecessor Laws and Regulations);
- (d) a Ministry Safety Standard or Higher Ministry Safety Standard or any Laws and Regulations relating to the enforcement thereof;
- (e) a GNWT Change Order;
- (f) the enactment of any law or regulation referred to in Section 25.12; or
- (g) the development, construction, or operation by GNWT, or the provision by GNWT of a financial or performance guarantee in respect of, any hydro electric project.

## **16.2 Consequences of Discriminatory Action**

If a Discriminatory Action is proven to the reasonable satisfaction of GNWT to have occurred so that the return on Invested Equity that the Project Company would have received but for the Discriminatory Action (the "**Proven Return**") is more than the return on Invested Equity to the Project Company following the Discriminatory Action (the "**Resulting Return**"), then the Project Company shall have the right to obtain compensation from GNWT (the "**Discriminatory Action Compensation**") as follows:

- (a) For the purpose of establishing the Proven Return, the Project Company shall use the Revised Traffic Forecast, if any, most recently preceding the Discriminatory Action;
- (b) References to the Proven Return in Subsections (b) and (i) and (i) hereof, and to the Resulting Return in Subsections (f), (g) and (h) hereof, are exclusive of the Base Return Amount payable to the Project Company pursuant to Subsection 11.3(c). In all other circumstances, a reference to the Proven Return or Resulting Return in this Section is inclusive of the Base Return Amount;
- (c) If, notwithstanding the Discriminatory Action, the Resulting Return is greater than or equal to 15%, then no Discriminatory Action Compensation shall be paid;
- (d) If the Resulting Return is less than 15% but greater than 4.5%, and the Proven Return is greater than or equal to 15%, then the Discriminatory Action Compensation shall be the difference between 15% and the Resulting Return;
- (e) If the Resulting Return is less than 15% but greater than 4.5%, and the Proven Return is less than 15%, then the Discriminatory Action Compensation shall be the difference between the Proven Return and the Resulting Return;
- (f) If the Resulting Return is equal to or less than 4.5% and the Proven Return is greater than or equal to 15%, then the Discriminatory Action Compensation shall be 10.5%, and any Additional Funds required to fund the Base Return Amount for



that Concession Year shall not form part of the Additional Funds Outstanding Balance;

- (g) If the Resulting Return is equal to or less than 4.5% and the Proven Return is less than 15% but greater than 4.5%, then the Discriminatory Action Compensation shall be the difference between the Proven Return and 4.5%, and any Additional Funds required to fund the Base Return Amount for that Concession Year shall not form part of the Additional Funds Outstanding Balance;
- (h) If the Resulting Return is equal to or less than 4.5% and the Proven Return is equal to or less than 4.5% but greater than 0%, then no Discriminatory Action Compensation shall be paid, but the Additional Funds equal to the difference between the Proven Return and the Resulting Return shall not form part of the Additional Funds Outstanding Balance;
- (i) If the Proven Return is 0%, then no Discriminatory Action Compensation shall be paid;
- (j) GNWT may set-off against any Discriminatory Action Compensation payable pursuant to this Section any Additional Funds Outstanding Balance then in existence.

#### **16.3 Notice of Discriminatory Action**

- (a) The Project Company shall give a notice (the "**Preliminary Notice**") to GNWT within thirty (30) Business Days following the date on which the Project Company first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred.
- (b) Within one hundred and eighty (180) days following the giving of the Preliminary Notice, the Project Company must give another notice (the "**Notice of Discriminatory Action**"). A Notice of Discriminatory Action must include:
  - (i) a statement of the Discriminatory Action which has occurred;
  - (ii) details of the effect of the said occurrence which is principally borne by the Project Company;
  - (iii) details of the material adverse effect of the said occurrence on the economic position of the Project Company; and
  - (iv) the amount claimed as Discriminatory Action Compensation and details of the calculation thereof.
- (c) GNWT shall, after receipt of the Notice of Discriminatory Action, be entitled by notice to require the Project Company to provide such further supporting particulars as GNWT may reasonably consider necessary.

- (d) If GNWT does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation, if any, claimed in the Notice of Discriminatory Action, then GNWT shall pay the amount of Discriminatory Action Compensation claimed to the Project Company within sixty (60) days following the date of receipt of the Notice of Discriminatory Action; or
- (e) If GNWT wishes to dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation, if any, claimed in the Notice of Discriminatory Action, GNWT shall give notice of dispute (the "Notice of Dispute") to the Project Company within thirty (30) days following the date of receipt of the Notice of Discriminatory Action stating the grounds for such dispute.
- (f) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days following the date of receipt of the Notice of Dispute by the Project Company, the matter shall be submitted to the dispute resolution procedure in Article 24.
- (g) Not later than sixty (60) days following the date of determination of the Discriminatory Action Compensation pursuant to Article 24, GNWT shall pay the amount of the Discriminatory Action Compensation that is determined, pursuant to Article 24, to be owing, if any, together with interest at the Interest Rate calculated from the 60th day following the date of receipt of the Notice of Discriminatory Action to the date on which payment is due.
- (h) Payment of the Discriminatory Action Compensation by GNWT to the Project Company, shall constitute full and final satisfaction of all amounts that may be claimed by the Project Company for and in respect of the occurrence of the Discriminatory Action and, upon such payment, GNWT shall be released and forever discharged by the Project Company from any and all liability in respect of such Discriminatory Action.

#### **16.4 Right of GNWT to Remedy Discriminatory Action**

If GNWT wishes to remedy the occurrence of a Discriminatory Action, GNWT shall give notice thereof to the Project Company within thirty (30) days following the date of receipt of the Notice of Discriminatory Action. If GNWT gives such notice it must remedy the Discriminatory Action within one hundred and eighty (180) days following the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days following the final award pursuant to Article 24 to the effect that a Discriminatory Action occurred, provided that the right to remedy the Discriminatory Action may be extended for such longer period as may be reasonably necessary to cure such Discriminatory Action, provided that GNWT has demonstrated to the satisfaction of the Project Company, acting reasonably, that:

- (a) it is proceeding with all due diligence to cure or cause to be cured such failure;

- (b) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Project Company, acting reasonably; and
- (c) it shall thereafter cure such failure with all due diligence and within the period of time acceptable to the Project Company, acting reasonably.

## **ARTICLE 17**

### **DEFAULT**

#### **17.1 Default by the Project Company**

The occurrence of any one or more of the following events shall constitute a Project Company Event of Default under this Agreement:

- (a) if the Project Company defaults in the payment of any amount due to GNWT under this Agreement and such default shall continue unremedied for forty-five (45) Business Days following notice thereof from GNWT to the Project Company;
- (b) if any material representation or warranty made by the Project Company in this Agreement or in any document or certificate required to be given pursuant to this Agreement shall prove to have been incorrect in any material respect when made and such incorrect representation or warranty, if capable of being remedied by the Project Company, has not been remedied within forty-five (45) Business Days following notice thereof (giving particulars of the incorrect representation or warranty in reasonable detail) from GNWT to the Project Company, or such longer period as may be reasonably necessary to cure such failure, provided that the Project Company has demonstrated to the satisfaction of GNWT, acting reasonably, that:
  - (i) it is proceeding with all due diligence to cure or cause to be cured such failure;
  - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to GNWT, acting reasonably; and
  - (iii) it shall thereafter cure such failure with all due diligence and within the period of time acceptable to GNWT, acting reasonably;
- (c) if the Project Company fails to perform any of its material obligations under this Agreement (other than as referred to in Subsections 17.1(a) or (b) on its part to be performed and such failure shall continue unremedied for a period of forty-five (45) Business Days following notice thereof (giving particulars of the failure in reasonable detail) from GNWT to the Project Company, or such longer period as may be reasonably necessary to cure such failure, provided that the Project Company has demonstrated to the satisfaction of GNWT, acting reasonably, that:

- (i) it is proceeding with all due diligence to cure or cause to be cured such failure;
  - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to GNWT, acting reasonably; and
  - (iii) it shall thereafter cure such failure with all due diligence and within the period of time acceptable to GNWT, acting reasonably;
- (d) if there is a default by the Project Company under any Project Agreement (other than as referred to in this Section 17.1) which is not cured prior to the expiry of the applicable notice and cure period, if any, relating thereto;
- (e) if, at any time, there is a Loan Event of Default and GNWT (i) remedies such Loan Event of Default pursuant to Subsection 20.1(b); (ii) steps in and receives the Project Company's rights and benefits and assume the Project Company's liabilities and obligations under the Debt and the Loan Documents pursuant to Subsection 20.1(d), or (iii) exercises its rights under Subsection 20.1(f) to repay the Debt in full and cancel the Loan Documents;
- (f) if any proceedings are commenced or taken for the dissolution, liquidation or winding-up of the Project Company or for the suspension of operations of the Project Company, whether by extra-judicial means or under any statute of any applicable jurisdiction or otherwise, unless such proceedings have been stayed within sixty (60) Business Days of commencement or have been withdrawn or dismissed within sixty (60) Business Days of commencement;
- (g) if a decree or order of a court having jurisdiction is entered adjudging the Project Company bankrupt or insolvent, or proving as properly filed a petition seeking a winding-up or arrangement or compromise of the Project Company under the *Companies Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding Up Act* (Canada) or any other bankruptcy, insolvency or analogous law or issuing process or execution against the Project Company, or against any substantial part of the property of the Project Company or ordering the winding-up or liquidation of the Project Company, and any such decree or order continues unstayed and in effect for a period of sixty (60) Business Days from its issuance and is not withdrawn or discharged within sixty (60) Business Days of issuance, or if a trustee, receiver, receiver and manager, interim receiver, custodian or other Person with similar powers is appointed in respect of the Project Company or in respect of all or a substantial portion of its property or assets and any such appointment continues unstayed and in effect for sixty (60) Business Days;
- (h) if the Project Company becomes insolvent, admits its inability to or fails to pay its debts generally as they become due, or otherwise acknowledges its insolvency, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act*

(Canada) or any comparable law, seeks relief under the *Companies Creditors Arrangement Act* (Canada), the *Winding Up Act* (Canada) or any other bankruptcy, insolvency or analogous law or is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator, agent for a Person with similar powers, in respect of the Project Company or in respect of all or a substantial portion of its property or assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, scheme, arrangement, extension of time, moratorium or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such petition or the commencement of such proceeding;

- (i) if a Transfer of any of the Project Company's Interest occurs that is not permitted under the Restriction on Transfer Agreement;
- (j) if the Project Company ceases to carry on all or substantially all of its business or makes a sale in bulk or except as permitted hereunder, transfers all or substantially all of its undertaking and assets;
- (k) if the Project Company fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Article 24 and such default continues unremedied for forty-five (45) Business Days following notice thereof from GNWT to the Project Company; and/or
- (l) if a judgment or judgments shall be entered against the Project Company in the aggregate amount of \$250,000.00 or more (net of any insurance proceeds the Project Company reasonably expects to receive and can so demonstrate to the reasonable satisfaction of GNWT) other than:
  - (i) a judgement which is fully covered by insurance or satisfied in full or discharged within 45 days after entry; or
  - (ii) a judgement, the execution of which is effectively stayed within 45 days after its entry (but only until such stay is terminated or expires),

provided the foregoing exceptions shall not apply if such judgment or judgments could reasonably be expected to materially impair or inhibit the performance, observance or compliance by the Project Company of its covenants, agreements, representations, warranties, obligations and undertakings under this Concession Agreement.

## **17.2 Exceptions**

Notwithstanding Section 17.1, no Project Company Default and no Project Company Event of Default will have occurred to the extent that the Project Company Default or Project Company Event of Default is directly attributable to the failure of GNWT to perform its obligations under this Agreement, including the failure of GNWT to pay the Sublease Payments

when due and payable in accordance with the provisions of this Agreement, unless GNWT is entitled to withhold or reduce payment of the Sublease Payments or part thereof under the terms of this Agreement or the Project Agreements.

### **17.3 Default by GNWT**

The occurrence of any one or more of the following events shall constitute a GNWT Event of Default under this Agreement:

- (a) if GNWT defaults in the payment of any amount due to the Project Company under this Agreement and such default shall continue unremedied for forty-five (45) Business Days following notice thereof from the Project Company to GNWT or in the case of amounts payable under Subsection 11.3(a), such default remains unremedied for five (5) Business Days following notice thereof from the Project Company or the Trustee or any Lender to GNWT;
- (b) if any material representation or warranty made by GNWT in this Agreement or in any document or certificate required to be given pursuant to this Agreement shall prove to have been incorrect in any material respect when made and such incorrect representation or warranty, if capable of being remedied by GNWT, has not been remedied within forty-five (45) Business Days following notice thereof (giving particulars of the incorrect representation or warranty in reasonable detail) from the Project Company to GNWT, or such longer period as may be reasonably necessary to cure such failure, provided that GNWT has demonstrated to the satisfaction of the Project Company, acting reasonably, that:
  - (i) it is proceeding with all due diligence to cure or cause to be cured such failure;
  - (ii) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Project Company, acting reasonably; and
  - (iii) it shall thereafter cure such failure with all due diligence and within the period of time acceptable to the Project Company, acting reasonably; or
- (c) if GNWT fails to perform any of its material obligations under this Agreement (other than as referred to in Subsection 17.3(a) or (b)) on its part to be performed and such failure shall continue unremedied for a period of forty-five (45) Business Days following notice thereof (giving particulars of the failure in reasonable detail) from the Project Company to GNWT, or such longer period as may be reasonably necessary to cure such failure, provided that GNWT has demonstrated to the satisfaction of the Project Company, acting reasonably, that:
  - (i) it is proceeding with all due diligence to cure or cause to be cured such failure;

- (ii) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Project Company, acting reasonably; and
- (iii) it shall thereafter cure such failure with all due diligence and within the period of time acceptable to the Project Company, acting reasonably; or
- (d) if GNWT fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Article 24 and such default continues unremedied for forty-five (45) Business Days following notice thereof from the Project Company to GNWT.

## **ARTICLE 18**

### **REMEDIES AND OTHER RIGHTS**

#### **18.1 Remedies of GNWT**

Upon the occurrence of a Project Company Event of Default under this Agreement, GNWT may do any or all of the following as GNWT, in its Sole Discretion, shall determine:

- (a) upon the occurrence of a Project Company Event of Default under any of Subsections 17.1(c), (e), (f), (g), (h), (i), (j) or (l) (collectively a "Termination Event"), GNWT may terminate this Agreement, save and except for:
  - (i) the provisions of Subsection 11.3(a);
  - (ii) to the extent applicable, Subsection 20.1(d); and
  - (iii) the provisions of Section 20.6,none of which may be terminated pursuant to this Subsection 18.1(a);
- (b) upon the occurrence of a Termination Event, GNWT may, without terminating this Agreement, exercise its step in rights under Section 18.2;
- (c) if the Project Company is in default under this Agreement by reason of the failure to pay any monies, GNWT may (without obligation to do so) make payment on behalf of the Project Company of such monies. Any amount so paid by GNWT shall, together with all accrued interest thereon at the Average Prime Rate plus three percent (3%) per annum, be recoverable by GNWT as a Project Company Default Cost in priority to any Sublease Payments required to be made to the Project Company under Section 11.3;
- (d) if the Project Company is in default under this Agreement by reason of the failure to pay any monies to GNWT, the monies owing to GNWT, together with all accrued interest thereon at the Average Prime Rate plus three percent (3%) per annum, shall be recoverable by GNWT as a Project Company Default Cost in priority to any Sublease Payments required to be made to the Project Company under Subsections 11.3(b), 11.3(c) or 11.3(d);

- (e) GNWT may, without abrogating from its obligation to make the payment required under Subsection 11.3(a) or its obligations under Subsection 20.1(d), which obligations shall continue notwithstanding any Project Company Default or Project Company Event of Default hereunder, cure the Project Company Default or the Project Company Event of Default (but this shall not obligate GNWT to cure or attempt to cure the Project Company Default or Project Company Event of Default or, after having commenced to cure or attempted to cure such Project Company Default or Project Company Event of Default, to continue to do so) and all costs and expenses incurred by GNWT in curing or attempting to cure the Project Company Default or Project Company Event of Default, together with interest thereon at the Average Prime Rate plus three percent (3%) per annum, shall be recoverable by GNWT as a Project Company Default Cost in priority to any Sublease Payments required to be made to the Project Company under Section 11.3.
- (f) GNWT may bring any proceedings in the nature of specific performance, injunction, or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Project Company Default under this Agreement;
- (g) GNWT may require the performance of the Work (in whole or in part) to be stopped;
- (h) GNWT may seek to recover its Losses and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;
- (i) upon the occurrence of a Project Company Event of Default that is not a Termination Event and in respect of which the step-in rights under Section 18.2 do not apply, GNWT may, to the extent required to achieve the Traffic Availability Date, re-enter the Facility Lands in the name of the whole and again, repossess and enjoy the Facility Lands as of GNWT's former estate until the Traffic Availability Date. Such action by GNWT in no way reduces the obligation of GNWT to make the Debt Service Payments in accordance with Subsection 11.3(a), which cannot be delayed, set-off or reduced by the occurrence of such action. Any re-entry made in accordance with this Agreement as against the Project Company shall be valid and effectual against the Project Company and any costs and expenses incurred by GNWT during its period of possession shall be recoverable by GNWT as a Project Company Default Cost in priority to any payments required to be made to the Project Company under Subsections 11.3(b), 11.3(c) or 11.3(d);
- (j) GNWT may, subject to Laws and Regulations, distrain against any of the goods of the Project Company which are situate on the Facility and the Project Company waives any statutory protections and exemptions in connection therewith; and/or
- (k) GNWT may exercise any of its other rights and remedies provided for hereunder or otherwise available to it.



**18.2 Step-In Rights**

- (a) Upon the occurrence of a Termination Event, GNWT may, in its Sole Discretion, without terminating this Agreement, give notice to the Project Company (the "Step-In Notice") advising the Project Company that GNWT, either by itself or through a GNWT Advisor, has elected to do any or all of the following:
  - (i) re-enter the Facility Lands in the name of whole and again, repossess and enjoy the Facility Lands as of GNWT's former estate for the duration of the Step-In Period;
  - (ii) step in and assume all or a portion of the Project Company's Interest, including the rights under the Project Agreements, and exercise its rights under the GNWT Security Agreement in accordance with Section 3.11 for the duration of the Step-In Period; and/or
  - (iii) require the Project Company to cancel or terminate all or some of the Project Agreements and enter into a new agreement or agreements with third parties for all or any portion of the Work then remaining, on terms and conditions acceptable to the parties, acting reasonably.
- (b) During the Step-In Period, all rights, privileges, benefits and entitlements of the Project Company under this Agreement shall be suspended and for the avoidance of doubt, the Project Company shall not be entitled to receive or benefit from any Sublease Payments during the Step-In Period other than with respect to amounts payable by GNWT in respect of Debt Service under Subsection 11.3(a) not otherwise paid by GNWT.
- (c) All Project Company Default Costs incurred by GNWT during the Step-In Period shall be recoverable by GNWT, together with interest at the Average Prime Rate plus 3% per annum, in priority to any Sublease Payments that may become payable to the Project Company following the expiry of the Step-In Period pursuant to Subsections 11.3(b), 11.3(c) or 11.3(d).
- (d) If at any time during the Step-In Period the Termination Event is remedied by the Project Company to the satisfaction of GNWT, acting reasonably, then the Step-In Period shall end and the Project Company shall once again be entitled to exercise all of its rights and remedies and shall be subject to all of its liabilities and obligations under the Concession Agreement, provided that:
  - (i) if, during the Step-In Period GNWT elected to enter into a new agreement or agreements with the Project Company for all or any portion of the Work, such agreement(s) shall continue in full force and effect following the expiry of the Step-in Period, in accordance with their respective terms; and
  - (ii) nothing herein shall prejudice the right of GNWT to terminate this Agreement for any subsequent Termination Event.

- (e) If following the expiry of the Step-In Period the Termination Event has not been remedied by the Project Company to the satisfaction of GNWT, acting reasonably, then this Agreement shall be terminated immediately without any further notice to the Project Company.

### **18.3 Remedies of Project Company**

Upon the occurrence of a GNWT Event of Default under this Agreement, the Project Company may do any or all of the following as the Project Company, in its Sole Discretion, shall determine:

- (a) the Project Company may seek such equitable remedies as are available to it, it being acknowledged that damages at law may be an inadequate remedy for a default by GNWT under this Agreement;
- (b) the Project Company may seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;
- (c) the Project Company may exercise any of its other rights and remedies provided for hereunder;
- (d) the Project Company may require the Trustee to set-off and deduct the amount of any monies that GNWT has failed to pay together with all accrued interest thereon at the Average Prime Rate plus three percent (3%) per annum, from any amounts otherwise payable to GNWT in respect of the Additional Funds Outstanding Balance and/or the Shared Return Amount as provided in paragraph (e) of this Section 18.3; and/or
- (e) if GNWT is in default under this Agreement by reason of the failure to pay any monies to the Trustee or a third party other than the Lender, the Project Company may (without obligation to do so) make payment on behalf of GNWT and/or may require the Trustee to set-off and deduct the amount of any monies that GNWT has failed to pay.

### **18.4 No Liability**

GNWT shall not be liable to the Project Company for any Losses whatsoever, howsoever caused by any acts or omissions of GNWT or the GNWT Advisors in remedying or attempting to remedy any Project Company Default, save and except any Losses caused or contributed to by the gross negligence or wilful misconduct of GNWT or the GNWT Advisors. No entry, remedying or attempting to remedy shall constitute:

- (a) a termination of this Agreement (unless written notice is given to that effect);
- (b) a breach of any covenant for quiet enjoyment or other covenant of GNWT; or
- (c) a constructive or actual eviction or other infringement of any other of the rights of the Project Company.

**18.5 Exclusivity**

Subject to the express provisions of this Agreement, each of GNWT and the Project Company may, in its Sole Discretion, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against the Project Company or GNWT authorized hereunder or permitted by law and may proceed to exercise any and all rights hereunder and no remedy for the enforcement of the rights of GNWT or the Project Company shall be exclusive of any other rights or remedies provided hereunder or at law or in equity or be dependent upon any such right or remedy and any one or more of such rights or remedies may from time to time be exercised independently or in combination.

**18.6 Non-Merger**

The taking of a judgment or judgments or any other action or dealing whatsoever by GNWT or the Project Company shall not operate as a merger of or discharge the Project Company or GNWT from any indebtedness, liability or obligation of the Project Company to GNWT arising under this Agreement.

**18.7 Remedies Cumulative and Waiver**

For the avoidance of doubt, subject to the express provisions of this Agreement, the respective rights and remedies of GNWT or the Project Company hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided hereunder or otherwise at law or in equity, and any such rights or remedies may be exercised by GNWT or the Project Company from time to time concurrently or independently and as often and in such order as GNWT may deem expedient in its Sole Discretion or as the Project Company may deem expedient in its Sole Discretion. GNWT or the Project Company may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Project Company and with other Persons and security as GNWT may deem fit without prejudice to the liability of the Project Company or GNWT hereunder or the rights and remedies of GNWT or the Project Company. Any single or partial exercise by GNWT or the Project Company of any right or remedy in respect of a Project Company Default or a GNWT Default of any term, covenant or condition contained herein shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which GNWT or the Project Company may be lawfully entitled for such GNWT Default or Project Company Default. Except as otherwise expressly set out herein, any failure or delay of GNWT or the Project Company in the exercise of any right or remedy or any abandonment or discontinuance of steps or proceedings to enforce the same shall not operate as a waiver thereof or affect or prejudice the right of GNWT or the Project Company to exercise any right or remedy available to it. No waiver or indulgence by GNWT or the Project Company of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained shall be effective unless made in writing and then only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of GNWT or the Project Company hereunder as a result of any other Project Company Default or GNWT Default hereunder.

## **ARTICLE 19 ASSIGNMENT**

### **19.1 Assignment by the Project Company**

- (a) On before the date for the satisfaction of the condition in Subsection 2.1(b)(i), the Project Company shall have executed, delivered and shall have caused the Initial Shareholders to execute and deliver the Restriction on Transfer Agreement.
- (b) Subject only to Section 19.2, except in accordance with the Restriction on Transfer Agreement, the Project Company shall not sell, convey, charge, mortgage, pledge, encumber, assign, sublease, gift, exchange, transfer or otherwise dispose of or part with possession of, whether by operation of law or otherwise (collectively a "Transfer") any of the Project Company's Interest, in whole or in part without Approval, which Approval may be withheld in the Sole Discretion of GNWT.

### **19.2 Encumbering of Rights**

Notwithstanding Section 19.1, the Project Company shall be entitled to mortgage and/or assign as security to the Lender (provided such Lender and the terms of such Debt have been Approved by GNWT) the Project Company's Interest, provided in all cases, that:

- (a) GNWT is given prior written notice of such assignment by way of security together with the name and address for service of each Lender;
- (b) there is not then any Project Company Default hereunder;
- (c) GNWT's title to the GNWT Lands and rights in respect of the Federal Lands and the Federal Government's title to the Federal Lands shall not be subjected to the Encumbrance of any Lender;
- (d) each Lender shall be required to give GNWT a copy of any written notice of any Loan Default by the Project Company under the Loan Documents entered into with respect to the Debt; and
- (e) each Lender agrees in writing with GNWT to observe and perform and be bound by Subsections 19.2(a) and 19.2(d) and Sections 3.3 and 20.1 of this Agreement.

## **ARTICLE 20 LENDER'S RIGHTS AND REMEDIES**

### **20.1 Rights and Obligations of Lenders Prior to Traffic Availability Date**

Until such time as the Traffic Availability Date has occurred, and provided GNWT has received the notice referred to in Subsection 19.2(a) and the agreement referred to in Subsection 19.2(e) or the contents thereof are embodied in the agreement entered into by GNWT in accordance with Section 20.3, the following provisions shall apply to the Debt and the Lender thereof:

- (a) Any Notice of a Project Company Default or a Project Company Event of Default given by GNWT to the Project Company under Section 17.1 shall also be given to the Lender, and any Notice of a Loan Default or a Loan Event of Default given by Lender to the Project Company under the Loan Documents shall also be given to GNWT.
- (b) Following receipt of a Notice of a Loan Default from the Lender, if the Loan Default relates to non-payment of Interest During Construction or Debt Service into the Debt Service Account when due as specified in Subsection 11.3(a), GNWT has the obligation within five (5) Business Days after receipt of notice from the Trustee of such non-payment to remedy such Loan Default;
- (c) If the Loan Default does not relate to the non-payment of Debt Service into the Debt Service Account by GNWT and following receipt of a Notice of a Loan Default from the Lender, GNWT has the right (but not the obligation) to remedy such Loan Default within the applicable cure period set out in the Loan Documents, if any and the Lender shall accept such performance by GNWT as if the same had been performed by the Project Company. If the Loan Default has not been remedied by GNWT or the Project Company within the applicable cure period, if any, set out in the Loan Documents, the Lender shall deliver to GNWT a Notice of a Loan Event of Default and GNWT shall have the right (but not the obligation) to cure or cause to be cured the Loan Event of Default within a further period of thirty (30) Business Days following receipt by GNWT of the Notice of the Loan Event of Default, provided, however, that such thirty (30) Business Day period shall be extended for such longer period as may be reasonably necessary to remedy such Loan Event of Default, provided that GNWT has demonstrated to the satisfaction of the Lender, acting reasonably, that:
  - (i) it is proceeding with all due diligence to cure or cause to be cured such Loan Event of Default;
  - (ii) its proceedings can be reasonably expected to cure or cause to be cured such Loan Event of Default within a reasonable period of time acceptable to the Lender, acting reasonably; and
  - (iii) it shall thereafter cure such Loan Event of Default with all due diligence and within the period of time acceptable to the Lender, acting reasonably.
- (d) Upon the occurrence of a Termination Event or a Loan Event of Default that has not been cured by the Project Company pursuant to the provisions of the Loan Documents or by GNWT pursuant to the provisions of Subsection 20.1(b) or Subsection 20.1(c):
  - (i) GNWT shall step-in and receive the Project Company's rights and benefits to the Debt and the Loan Documents and assume and be bound by all current, future and overdue liabilities and obligations of the Project Company to the Lender in respect of the Debt and the Loan Documents including making any Debt Service Payments and overdue amounts in

respect of such Debt Service that have not been made as scheduled (provided the amounts and details of such payments and overdue payments have been set out in a Notice of a Loan Default previously given by the Lender to GNWT); and

- (ii) GNWT and the Lender shall execute and deliver all documents and other assurances (the "Assumption and Assignment Documents") as may be reasonably required by the Lender in order for GNWT to assume the Project Company's rights and benefits to the Debt and the Loan Documents and to assume and be bound by all liabilities and obligations of the Project Company to the Lender in respect of the Debt and the Loan Documents, and all such documentation shall be settled and executed by GNWT and the Lender as expeditiously as possible.
- (e) After the execution and delivery of the Assumption and Assignment Documents, if requested by GNWT, the Lender shall release and discharge all Security Instruments relating to the Project Company's Interest, save and except for any Security Instruments with respect to (i) the obligations of GNWT under the Assumption and Assignment Documents, and, (ii) that portion of the Sublease Payments referred to in Subsection 11.3(a).
- (f) Subject to the satisfaction of all of the Conditions Precedent for Debt Prepayment, upon the occurrence of a Termination Event or a Loan Event of Default that has not been cured by the Project Company pursuant to the provisions of the Loan Documents or by GNWT pursuant to the provisions of Subsection 20.1(b), in lieu of entering into the Assumption and Assignment Documents, or at any time after the execution and delivery of the Assumption and Assignment Documents, GNWT shall have the right to repay the Debt in full and cancel the Loan Documents, provided that GNWT delivers a Notice to each of the Lender and to the Project Company at least thirty (30) Business Days prior to the date on which the prepayment of the Debt is proposed to be made. The Conditions Precedent for Debt Prepayment (i) are for the sole benefit of Lender, and (ii) may be waived in whole or in part by the Lender in its Sole Discretion. The determination of whether or not the Conditions Precedent for Debt Prepayment have been satisfied shall be made by the Lender, acting reasonably. Provided that the Conditions Precedent for Debt Prepayment have been satisfied as aforesaid, the Lender and GNWT shall, within ten (10) Business Days following the satisfaction or waiver of the Conditions Precedent for Debt Prepayment execute and deliver to each other an acknowledgment (in form and content satisfactory to each of them, acting reasonably), confirming the repayment, whereupon the cancellation of the Loan Documents shall become effective and binding on GNWT, the Lender and the Project Company.
- (g) Subject to Section 11.6, while any Debt is outstanding and prior to the Traffic Availability Date, GNWT and the Project Company shall not amend, change or supplement this Agreement or any Project Agreements (other than the OMM Agreement) or agree to a voluntary surrender or voluntary termination of this Agreement or any Project Agreement (other than the OMM Agreement) without

the consent of the Lender, which consent may be withheld in Lender's Sole Discretion and/or be subject to such terms and conditions as the Lender may require. The Lender shall use its reasonable best efforts to respond within a reasonable period of time to any request to amend, change or supplement this Agreement or for a voluntary surrender or voluntary termination thereof.

## **20.2 Rights and Obligations of Lender and GNWT after Traffic Availability Date**

Unless GNWT has executed and delivered the Assumption and Assignment Documents as set forth in Section 20.1, for the avoidance of doubt, the provisions of Section 20.1 shall not apply on and following the occurrence of the Traffic Availability Date. Notwithstanding the preceding sentence or anything to the contrary contained in Section 20.1, at any time after the Traffic Availability Date, (i) GNWT shall have the right and entitlement (but not the obligation) to assume all the liabilities and obligations of the Project Company in respect of the Debt and the Loan Documents in accordance with Subsection 20.1(d) in which event Subsection 20.1(c) shall apply and (ii) subject to compliance with Subsection 20.1(f), GNWT shall have the right (but not the obligation) to repay the Debt in full and cancel the Loan Documents. In furtherance of the foregoing, on and after the Traffic Availability Date the Lender shall have no right or remedy under any Security Instrument with respect to the Project Company's Interest save and except with respect to that portion of the Sublease Payments referred to in Subsection 11.3(a) and the Lender's rights pursuant to Section 20.6 and shall have no right to otherwise accelerate the Debt except in the case of an Event of Default by GNWT to make the Sublease Payments referred to in Subsection 11.3(a), and the Lender shall release and discharge, at no cost to GNWT, all Security Instruments relating to the Project Company's Interest, save and except with respect to that portion of the Sublease Payments referred to in Subsection 11.3(a).

## **20.3 Agreement(s) with Lender**

GNWT and the Project Company shall enter into an agreement with any Lender for the purpose of implementing the Lender protection provisions contained in Article 20 of this Agreement (and such other matters as GNWT, the Project Company or the Lender may require, acting reasonably) on or before the date for the satisfaction of the condition in Subsection 2.1(c)(ii) and in Subsection 2.1(h)(ii).

## **20.4 GNWT's Obligations re: Estoppel Certificates**

GNWT shall, promptly upon the request of the Project Company or any Lender, execute, acknowledge and deliver to the Project Company or such Lender or any of the parties reasonably specified by the Project Company or such Lender, estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of the designated representative of GNWT. Nothing herein shall require GNWT to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

## **20.5 Project Company's Obligation re: Estoppel Certificates**

The Project Company shall, promptly upon the request of GNWT or any Lender, execute and deliver to GNWT or such Lender, or any other party reasonably specified by GNWT or such Lender, estoppel certificates with respect to this Agreement and the Project Agreements which

may be qualified to the best of the knowledge and belief of the designated representative Project Company. Nothing herein shall require the Project Company to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

#### **20.6 Lender's Rights re: Ineligible Cost Overrun Facility**

If, following the occurrence of a Termination Event and the termination of this Agreement as a result thereof or a termination pursuant to Section 21.1 (without duplication to any Termination Damages), an amount remains outstanding and unpaid on the Ineligible Cost Overrun Facility which is attributable to advances by the Lender of amounts in respect of Ineligible Cost Overruns (the "**Ineligible Cost Overrun Advances**"), then, subject to Section 20.7 hereof, GNWT shall pay to the Lender the sum of two hundred and twenty-five thousand dollars (\$225,000) per year, or such lesser amount as is then outstanding and unpaid in respect of the Ineligible Cost Overrun Advances, until such time as all principal, interest, and other amounts outstanding in respect of the Ineligible Cost Overrun Advances have been repaid in full.

For the avoidance of doubt, except in the event of any ongoing dispute with respect to the payment by GNWT of any amount outstanding in respect of the Ineligible Cost Overrun Advances which has either been referred for determination to the dispute resolution process under Article 24 or a comparable dispute resolution process established under the agreement contemplated in Section 20.3, or any delay in payment by GNWT, the obligation of GNWT under this Section 20.6 shall end on the Concession Termination Date, or such earlier date that the Ineligible Cost Overrun Advances have been fully repaid.

#### **20.7 Conditions to GNWT Repayment of Ineligible Cost Overrun Facility**

It shall be a condition to GNWT's obligation to repay to the Lender the Ineligible Cost Overrun Advances pursuant to Section 20.6 hereof, that the Lender shall have observed, satisfied, fulfilled and performed each of the following covenants and obligations, which covenants and obligations shall be included in the agreement between GNWT and the Lender referred to in Section 20.3 hereof:

- (a) The Ineligible Cost Overrun Facility shall not exceed three million dollars (\$3,000,000) without the prior written approval of GNWT, which approval may be withheld in GNWT's Sole Discretion;
- (b) Prior to any advance being made by the Lender under the Ineligible Cost Overrun Facility:
  - (i) the Lender shall have received written confirmation from GNWT that no Project Company Default or Project Company Event of Default has occurred under the Concession Agreement and is continuing or would, by reason thereof, occur after the funding of the requested Cost Overrun;
  - (ii) the Lender shall be satisfied and shall have confirmed to GNWT that no Loan Default or Loan Event of Default has occurred under the Loan Documents and is continuing or would, by reason thereof, occur after the funding of the requested Cost Overrun;



- (iii) the Lender shall be satisfied and shall have received confirmation from GNWT that no material adverse change in the financial condition or business of the Project Company has occurred or would, by reason thereof, occur after the funding of the requested Cost Overrun; and
  - (iv) the Lender shall be satisfied, acting reasonably and based upon receipt of appropriate supporting documentation from the Project Company, that amounts advanced by it under the Ineligible Cost Overrun Facility have been applied by the Project Company to fund costs in respect of the Work; and
- (c) The Lender shall report to GNWT on a monthly basis commencing on the Commencement of Construction as to the status of the Ineligible Cost Overrun Facility, which report shall include the following information:
- (i) amounts advanced under the Ineligible Cost Overrun Facility during the preceding month;
  - (ii) the amount of any Unclassified Cost Overruns, Ineligible Cost Overruns, and Eligible Cost Overruns advanced by the Lender during the preceding month;
  - (iii) the aggregate of all amounts advanced under the Ineligible Cost Overrun Facility from the Commencement of Construction, together with the classification of such Cost Overruns; and
  - (iv) the steps taken by the Lender to monitor Cost Overruns to ensure that they are minimized to the extent reasonably practicable.

**ARTICLE 21**  
**DAMAGES PAYABLE TO PROJECT COMPANY**  
**FOR TERMINATION BY GNWT**

**21.1 Termination**

In addition to its other rights to terminate this Agreement, GNWT shall have the right to terminate this Agreement without cause, in which event it shall pay to the Project Company (or as otherwise provided herein) on the Reversion Date an amount equal to, in each case without duplication, the aggregate of:

- (a) the Project Company's Interest Value; plus
- (b) the Losses incurred by the Project Company as a result of such termination; plus
- (c) if termination occurs before the Traffic Availability Date, the amount of the Debt which amount shall be paid to the Lender, plus
- (d) any breakage costs and other Losses arising from the prepayment of the Debt which costs and Losses shall be paid to the Lender; less

- (e) expropriation proceeds received by the Project Company in respect of all or any portion of the Project as a result of the termination of this Agreement

(collectively, the **"Termination Damages"**).

## **21.2 Termination Damages**

- (a) **"Project Company's Interest Value"** means the amount determined as set out in Subsection 21.2(b).
- (b) The Project Company's Interest Value shall be the amount, if any, as may be required to ensure that following receipt by the Project Company of the Project Company's Interest Value but before consideration of any amounts received by the Project Company referred to in Subsection 21.1(c), the value of the Project Company's Interest on the End Date is the same as it would have been had the termination of this Agreement not occurred, calculated on a present value basis.
- (c) Notwithstanding anything else contained in this Article 21, the amount of the Termination Damages shall not be less than the aggregate of:
  - (i) the Invested Equity;
  - (ii) any amounts paid or payable by the Project Company in connection with Eligible Cost Overruns other than by way of the Debt;
  - (iii) the present value of the Enhanced Return Amount calculated from the date of termination of this Agreement to the Concession Termination Date; and
  - (iv) any Losses of the Project Company arising from the termination of employment contracts, the Debt and any other obligations of the Project Company.
- (d) GNWT may give to the Project Company a notice (the **"Valuation Notice"**), from time to time, setting out an amount that GNWT proposes as the Termination Damages, together with details of the calculations. The Project Company shall indicate its acceptance of the Termination Damages proposed by GNWT by giving written notice (the **"Acceptance Notice"**) to GNWT within thirty (30) days following receipt by the Project Company of the Valuation Notice. If the Project Company does not give the Acceptance Notice to GNWT within thirty (30) days following receipt of the Valuation Notice, the Project Company shall be deemed not to have accepted the Termination Damages so proposed. If the Acceptance Notice is not given, GNWT and the Project Company shall attempt to determine the Termination Damages through negotiation, and any amount so agreed shall be the Termination Damages. If a negotiation has not resulted in an agreement within sixty (60) days following the giving of the Valuation Notice, the Termination Damages shall be determined in accordance with the procedure set forth in Subsections 21.2(c) and 21.2(f) and Article 24 shall not apply to such determination.

- (e) If the negotiation described in Subsection 21.2(d) does not result in an agreement on the Termination Damages, either party may by notice to the other require that the dispute be resolved by mediation as described below. The mediation shall be held within thirty (30) days following the end of the sixty (60)-day negotiation period referred to in Subsection 21.2(d). Within seven (7) days following the end of such sixty (60)-day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be binding on them. If the parties fail to agree on a mediator or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.
- (f) If the procedures described above do not result in an agreement on the Termination Damages, GNWT and the Project Company shall, within sixty (60) days following the date of receipt of the notice of mediation, jointly appoint a valuator to determine the Termination Damages. The valuator so appointed shall be a duly qualified business valuator having not less than fifteen (15) years' experience in the field of business valuation. If the parties are unable to agree upon a valuator within such period, GNWT and the Project Company shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the Arbitration Act to a judge of the Supreme Court to appoint a valuator, and the provisions of the Arbitration Act shall govern such appointment. The valuator shall determine the Termination Damages within sixty (60) Business Days following his or her appointment. GNWT shall pay the fees and expenses of the valuator.
- (g) In order to facilitate the determination of the Termination Damages by the valuator, each of GNWT and the Project Company shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Project Company shall permit the valuator and his representatives to have reasonable access during normal business hours to its Information and to take extracts therefrom and to make copies thereof.
- (h) The Termination Damages as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (i) Payment of the Termination Damages by GNWT to the Project Company (or as otherwise provided in Section 21.1) shall constitute full and final satisfaction of all amounts that may be claimed by the Project Company for and in respect of the termination of this Agreement and upon such payment, GNWT shall be released and forever discharged by the Project Company from any and all liability in respect of such termination hereunder.

## **ARTICLE 22 CONSEQUENCES OF TERMINATION**

### **22.1 General Provisions**

Upon the termination of this Agreement (other than the provisions of Subsection 11.3(a) which may not be terminated except pursuant to a termination under Section 2.2 or Section 2.3 and subject to the provisions of Article 20):

- (a) Subject to Subsection 22.1(b), GNWT shall, from and following the Reversion Date, become the owner of the Facility and in consideration therefor, assume full responsibility for the operation, tolling, management, maintenance and/or rehabilitation of the Facility.
- (b) The Project Company shall be responsible for all costs incurred in connection with the operation, management, maintenance and/or rehabilitation of the Facility up to but not including the Reversion Date and GNWT shall be responsible for all such costs incurred in connection with such activities from and following the Reversion Date.
- (c) The Project Company covenants that the Facility shall be in the state or condition required pursuant to the Handback Standards as of the Reversion Date.
- (d) GNWT shall have the option of requiring that the Project Company assign the Project Agreements to GNWT or any party designated by GNWT for the balance of their respective terms. GNWT shall exercise such option by delivering a written notice to such effect to the Project Company. If GNWT exercises such option, the Project Agreements shall be assigned to GNWT or such designated party as of the Reversion Date and GNWT or such designated party shall assume the Project Company's obligations under the Project Agreements. If GNWT does not exercise such option, the Project Company shall take such steps as are necessary to terminate the Project Agreements.
- (e) Subject only to the continuing rights of the Developer, the Designer, the Constructor and the Operator, if the Project Agreements are assigned to GNWT or any party designated by GNWT as provided in Subsection 22.1(d), the Project Company shall surrender the Facility and the Facility Lands to GNWT (and, if requested by GNWT, transfer and assign the Facility to GNWT free and clear of all Encumbrances, save and except for any Security Instrument with respect to Subsection 11.3(a) and those Permitted Encumbrances that are not required to be discharged or vacated on the End Date), and shall cause all Persons claiming under the Project Company to do likewise.
- (f) The Project Company shall deliver to GNWT all records and other documents relating to the Revenues and all other records and information relating to the Facility that the Project Company may theretofore have received pursuant to the Project Agreements, as well as any monies in the Accounts and any Sublease Payments that may be in its possession or under its control.

- (g) The Project Company shall assist GNWT in such manner as GNWT may require to ensure the orderly transition of control and operation of the Facility and shall, if appropriate and if requested by GNWT, take all steps as may be necessary to enforce the provisions of the Project Agreements pertaining to the surrender of the Facility.
- (h) Adjustments shall be made to the Sublease Payments on the Reversion Date as may be appropriate in the circumstances subject to further readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the Period of one hundred and eighty (180) days following the Reversion Date. GNWT and the Project Company acknowledge that certain adjustments or readjustments may have to be made when a third party provides to GNWT or the Project Company a final adjustment amount in respect of a matter, and for such matters, the adjustment and readjustment date shall each be correspondingly extended.
- (i) Subject to Subsection 22.1(j), all rights of the Project Company hereunder shall cease and terminate and GNWT shall be under no further obligation or liability whatsoever to the Project Company with respect thereto; provided that, notwithstanding such termination, GNWT shall have the right and option to require the Project Company to complete or cause to be completed (in accordance with this Agreement and at the cost of GNWT) any or all of the Work as GNWT may designate in writing to the Project Company for a price to be mutually agreed upon between GNWT and the Project Company, each acting reasonably. Without limiting the foregoing, GNWT shall be entitled, without hindrance or interference, to enter into such contracts, agreements and instruments with such Person (other than the Project Company), as GNWT shall in its Sole Discretion determine with respect to the Work or the Facility or any part thereof, and the Project Company shall have no right or basis to make any claim or pursue, initiate or take any action against GNWT for so doing.
- (j) The termination of this Agreement whether by the effluxion of time or by the exercise of any right of either GNWT or the Project Company pursuant to this Agreement shall be wholly without prejudice to the right of each of the parties to recover payment arising as a result of such termination or pursuant to Article 14 or for antecedent Project Company Default or GNWT Default by the other party of any of its covenants, obligations or agreements under this Agreement.

## **22.2 Continuance of Sublease Payments under Subsection 11.3(a)**

Notwithstanding any provision of the Agreement which purports to entitle any party hereto to terminate or amend this Agreement, Subsection 11.3(a) and Section 20.6 of this Agreement shall remain in full force and effect and unamended until the Concession Termination Date, or until such earlier time as the Debt or the Ineligible Cost Overrun Advances, as the case may be, is repaid in full, provided the foregoing shall not apply to a termination of this Agreement pursuant to Section 2.2 or Section 2.3 of this Agreement and in the case of such a termination under Section 2.2 or Section 2.3 of this Agreement, GNWT shall have no further

obligations or liabilities under this Agreement including under Subsection 11.3(a) and Section 20.6.

## **ARTICLE 23 PROJECT COMPANY GOVERNANCE**

### **23.1 Project Company Major Actions**

Without Approval, the Project Company shall not:

- (a) engage in any business or activity other than the development, design, construction, ownership, operation, management, maintenance and rehabilitation of the Facility in accordance with the provisions of this Agreement and the Project Agreements and such ancillary businesses and activities expressly permitted hereunder;
- (b) incur any liabilities or obligations other than Project Company Costs, those contemplated by the Project Agreements and those arising with respect to the Debt;
- (c) save and except for legal proceedings initiated by the Project Company against GNWT, which the Project Company may initiate at its sole cost and expense:
  - (i) initiate legal proceedings if the costs associated therewith will exceed \$100,000.00 or initiate any legal proceedings which involve a Claim of the type excluded in Subsection 14.3(b); or
  - (ii) settle any legal proceedings involving settlement amounts in excess of \$100,000.00 or settle any legal proceedings of the type excluded in Subsection 14.3(b); or
- (d) except as expressly contemplated herein, sell, assign, transfer, or grant an Encumbrance other than a Permitted Encumbrance against all or a substantial portion of its assets.

## **ARTICLE 24 DISPUTE RESOLUTION**

### **24.1 Pre-Arbitration Procedures and Advisory Board**

In the event of any dispute arising between GNWT and the Project Company under this Agreement, including a dispute regarding the occurrence of a Project Company Default, a GNWT Default, a Project Company Event of Default or a GNWT Event of Default, the giving or withholding of an Approval or the obligations of the Project Company hereunder, unless otherwise provided herein, such dispute shall, in the first instance, be referred to the Director of Highways, Department of Transportation of GNWT and the executive director of the Project Company for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within five (5) Business Days after notice from any party requiring the dispute to be resolved, the dispute shall be referred to the then chief executive officer of the Project Company, and the then

Deputy Minister of the Department of Transportation of GNWT. If the dispute is not resolved to the mutual satisfaction of the parties by the then chief executive officer of the Project Company and the then Deputy Minister of the Department of Transportation of GNWT within five (5) Business Days after notice from any party requiring the dispute to be resolved, then, at the request of either party, the dispute shall be resolved by arbitration as set out below. Initiation of Arbitration Proceedings

Whenever any arbitration is permitted or required hereunder, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party") specifying the matter to be arbitrated and requesting an arbitration thereof. Within five (5) Business Days after delivery of such notice, the Initiating Party and Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint the single Arbitrator within the time limit aforesaid, then the Initiating Party shall, by notice to the Responding Party, designate an arbitrator. The Responding Party shall, within fifteen (15) Business Days thereafter, appoint an arbitrator by notice to the Initiating Party, and the two arbitrators so appointed shall thereupon meet and select a third arbitrator acceptable to both. If the Responding Party fails to appoint an arbitrator within the time limit aforesaid and deliver notice thereof to the Initiating Party, then, the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent for the Responding Party for such purpose. If the two arbitrators so appointed are unable to agree upon a third arbitrator within fifteen (15) Business Days of the appointment of the arbitrator for the Responding Party, then the Initiating Party shall be entitled to make application to a judge of the Supreme Court under the Arbitration Act for selection of a third arbitrator, and the provisions of the Arbitration Act shall govern such selection.

#### **24.2 Qualified to Act**

The Single Arbitrator or panel of arbitrators selected to act hereunder (the "Arbitrator") shall be qualified by profession or occupation to decide the matter in dispute.

#### **24.3 Submission of Written Statements**

- (a) Within fifteen (15) Business Days of the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send the Responding Party a Statement of Claim setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within fifteen (15) Business Days of the receipt of the Statement of Claim, the Responding Party shall send the Initiating Party a Statement of Defence stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds, and on what other facts and contentions of law it relies.
- (c) Within fifteen (15) Business Days of receipt of the Statement of Defence, the Initiating Party may send the Responding Party a Statement of Reply.
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the

party concerned relies and which have not previously been submitted by any party, and (where practicable) by any relevant samples.

- (e) After submission of all the Statements, the Arbitrator shall give directions for the further conduct of the arbitration.

#### **24.4 Meetings and Hearings**

- (a) Meetings and hearings of the Arbitrator shall take place in the City of Yellowknife or in such other place as the Initiating Party and the Responding Party shall agree upon in writing and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and will give all the parties adequate notice of these. Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive Business Days until it is concluded.
- (b) All meetings and hearings shall be in private unless the parties otherwise agree.
- (c) Any party may be represented at any meetings or hearings by legal counsel.
- (d) Each party may examine, cross-examine and re-examine all witnesses at the arbitration.

#### **24.5 The Decision**

- (a) Subject to the provisions of the Arbitration Act, the Arbitrator shall make and send a decision in writing to the parties within forty-five (5) Business Days after the submission of all the Statements referred to in Section 24.3 unless that time period is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall set out reasons for the decision in the decision.
- (b) In the case of a panel of Arbitrators, the decision of the majority of the Arbitrators shall be deemed to be the decision of the arbitration panel.
- (c) Subject to the provisions of the Arbitration Act, and with the exception of monetary claims in excess of Ten Million Dollars (\$10,000,000.00) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures provided herein in good faith and has proceeded in accordance with the principles of natural justice.
- (d) If the decision involves the resolution of a monetary claim in excess of Ten Million Dollars (\$10,000,000.00) or if there has been an error in law, the decision of the Arbitrator may be appealed by the parties and determined by an action brought in a court of competent jurisdiction.



**24.6 Jurisdiction and Powers of the Arbitrator**

- (a) By submitting to arbitration under these provisions, the parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the discretion of the Arbitrator subject only to the provisions hereof and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the Arbitrator at law, the Arbitrator shall have jurisdiction to:
  - (i) determine any question of law arising in the arbitration;
  - (ii) determine any question as to the Arbitrator's jurisdiction;
  - (iii) determine any question of good faith or dishonesty arising in the dispute;
  - (iv) order any party to furnish further details of that party's case, in fact or in law;
  - (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
  - (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
  - (vii) make one or more interim awards;
  - (viii) hold meetings and hearings, and make a decision (including a final decision) in the Northwest Territories or elsewhere with the concurrence of the parties;
  - (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or control which the Arbitrator determines to be relevant;
  - (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties;
  - (xi) make an order or orders as to the payment of costs of the arbitration; and
  - (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from the appropriate date as determined by the Arbitrator.

**24.7 Arbitration Act**

The rules and procedures of the Arbitration Act shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of this Article 24.

**24.8 Provisional Remedies**

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights which may be necessary and which is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders.

**24.9 Continuing Performance**

At all times during the Term, notwithstanding the existence of any dispute, GNWT and the Project Company shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement. For example, in the event of a dispute regarding the reasonableness of any Approval by GNWT, the Project Company shall comply with such decision but shall have the right to submit the question of reasonableness to the Arbitrator pursuant to this Article 24.

**24.10 Claims on Termination**

Notwithstanding anything contained in this Agreement, the dispute resolution procedure set forth in this Article 24 shall no longer apply to the parties after the expiry of the Term or other termination of this Agreement and the parties shall be entitled after the expiry of the Term or other termination of this Agreement to commence legal proceedings seeking any recourse available to it or them at law or in equity.

**24.11 Lenders to Participate in Arbitration**

Provided that the Lender has given GNWT the written notice contemplated in Subsection 19.2(a) and has entered into the Agreement with GNWT contemplated in Subsection 19.2(e), then such Lender shall be entitled to notice of and, at the request of either GNWT or the Project Company, to participate in any arbitration conducted under this Article 24, provided that subject to Section 24.5, the Lender agrees to be bound by the decision of the Arbitrator hereunder.

**ARTICLE 25  
GENERAL**

**25.1 Disclosure**

Subject to the provisions and disclosure requirements of any applicable legislation, any disclosure required by law or any disclosure required in the course of enforcement or arbitration proceedings, or any disclosure permitted hereunder, no public disclosure of any kind shall be made by the Project Company in respect of the subject matter of this Agreement without consultation with and the Approval of GNWT (such consent not to be unreasonably withheld).

## **25.2 Notice**

All notices and Approvals required or permitted by this Agreement shall be in writing and delivered personally or by courier or sent by telecopier to:

(a) in the case of GNWT at:

Address: P.O. Box 1320  
Yellowknife, NT  
X1A 2L9  
Canada

Attention: Director Transportation Planning  
Fax Number: (867)920-2565

(b) in the case of the Project Company at:

Address: P.O. Box 299  
Fort Providence, NT  
X0E 0L0

Attention: Executive Director  
Fax Number: (867) 873-6543

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or on the day on which transmission is confirmed, if telecopied. If such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next Business Day.

## **25.3 Costs**

Except as otherwise provided in this Agreement, each party shall be responsible for its own fees, expenses and other costs incurred in connection with carrying out its obligations under this Agreement.

## **25.4 Time of the Essence**

Time is of the essence of every provision of this Agreement. The extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

## **25.5 Further Acts**

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each of the parties will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be

reasonably requested by any other party in order to cure any defect in the execution and/or delivery of this Agreement.

#### **25.6 Holding Over**

If the Project Company remains in possession of the Facility Lands and the Facility after the End Date, such holding over shall not be deemed to extend the Term or to renew the concession and lease granted hereunder or the sublease granted hereunder, but the Project Company shall be, and be deemed to be, occupying the Facility Lands as a tenant from month to month at the Concession Fee in effect during the last month of the Term, and GNWT shall be, and be deemed to be, occupying the Facility Lands as a sub-tenant from month to month on the same terms and conditions contained in this Agreement, provided that GNWT shall not be required to make any further Sublease Payments after the End Date, save and except for payments under Subsection 11.3(a) which shall continue until the Concession Termination Date.

#### **25.7 Registration of Notice of Agreement**

- (a) The Project Company may, at its sole cost and expense, attend to the registration of notice of this Agreement (but not the Agreement itself) and the Project Company's leasehold interest in the Facility Lands, provided that the form of such notice is Approved by GNWT. Upon receipt from the Project Company, GNWT shall execute and return to the Project Company the documents required to register notice of this Agreement and the Project Company's leasehold interest in the Facility Lands as aforesaid which have been Approved as to form by GNWT.
- (b) GNWT may, at its sole cost and expense, attend to the registration of notice of this Agreement (but not the Agreement itself) and GNWT's subleasehold interest in the Facility Lands. Upon receipt from GNWT, the Project Company shall execute and return to GNWT the documents required to register notice of this Agreement and GNWT's subleasehold interest in the Facility Lands as aforesaid.
- (c) In any event, any document registered pursuant to this Section 25.7 shall not contain any reference to any of the financial terms hereunder, including the Concession Fee or Sublease Payments payable by either party hereunder, unless the appropriate registrar or master will not accept same for registration if such information is not contained therein.
- (d) Upon the termination of this Agreement for any reason whatsoever, the Project Company shall, at the request of GNWT, co-operate in the removal of any notice of this Agreement and the Project Company's leasehold interest in the Facility Lands which has previously been registered on title to the Facility Lands.

#### **25.8 Jurisdiction**

This Agreement shall be governed by the laws of the Northwest Territories and the laws of Canada applicable therein. Subject to Article 24, each party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Northwest Territories.

**25.9 Amendment**

This Agreement may be amended only by written agreement of the parties and only to the extent provided herein.

**25.10 Waiver**

Save as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

**25.11 Entire Agreement**

This Agreement and the agreements contemplated herein or therein constitute the entire agreement among the parties pertaining to all the matters herein. With respect to the matters dealt with herein but not otherwise, this Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no representations, warranties, conditions or any other agreements, whether direct or collateral, or express or implied to form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

**25.12 Severability**

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable, (i) the remainder of this Agreement or the application of such provision or portion thereof to any other Person or circumstance shall not be affected thereby, and (ii) the parties shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to and in accordance with Article 24. If by means of the dispute resolution procedure the parties are unable, as a result of Laws and Regulations, to resolve the matter in a manner which effectively entitles GNWT to have the same rights after the aforesaid determination of invalidity or unenforceability as before, GNWT shall have the right to enact and cause to come into force any law or regulation to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

**25.13 Counterparts**

This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same agreement. This Agreement shall not be binding upon any party until it has been executed by each of the parties and delivered to all other parties.

**25.14 Enurement and Binding Effect**

This Agreement shall enure to the benefit of the parties and in the case of the Project Company its respective permitted successors and assigns and in the case of GNWT, its respective successors and assigns and shall be binding upon the parties and their respective successors and assigns.

**25.15 No Partnership**

It is understood and agreed that nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between GNWT and the Project Company.

IN WITNESS WHEREOF the parties have executed this Agreement.

**THE MINISTER OF TRANSPORTATION ON  
BEHALF OF THE GOVERNMENT OF THE  
NORTHWEST TERRITORIES AND THE  
COMMISSIONER OF THE NORTHWEST  
TERRITORIES**

Per:

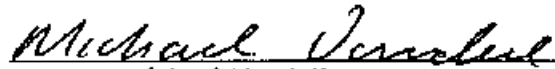


Name: Kevin Menicoche

Title: Minister of Transportation

**DEH CHO BRIDGE CORPORATION LTD.**

Per:



Name: Michael Vandell

Title: President

Per:



Name: Berna Landry

Title: Director

## **AMENDMENT AGREEMENT No. 1**

**BETWEEN:**

**THE MINISTER OF TRANSPORTATION ON BEHALF OF THE  
GOVERNMENT OF THE NORTHWEST TERRITORIES AND  
THE COMMISSIONER OF THE NORTHWEST TERRITORIES**

(hereinafter called "GNWT")

**OF THE FIRST PART**

- and -

**DEH CHO BRIDGE CORPORATION LTD.**, a corporation  
incorporated under the laws of the Northwest Territories  
(hereinafter called the "Project Company")

**OF THE SECOND PART**

**WHEREAS:**

On September 28, 2007, the Parties entered into a Concession Agreement pertaining to the development, design, construction, operation and maintenance of the Deh Cho Bridge (the "Concession Agreement");

Article 2.3 of the Concession Agreement specifies that all of the Parties' rights, obligations and liabilities under the Concession Agreement are subject to and conditional upon the Lender agreeing to advance the Debt on or before December 31, 2007, or such later date as may be mutually agreed upon between the Parties, each acting reasonably;

The Lenders have advised the Project Company that it will not be possible for the Lenders to advance the Debt on or before December 31, 2007, but that, subject to the Lenders' being satisfied with the necessary documentation and arrangements, it will be possible for the Lenders to advance the Debt in the month of January, 2008;

The Parties have agreed to attempt to have the Debt advanced, on January 18, 2008, or shortly thereafter, but in any event prior to January 31, 2008.

**NOW, THEREFORE, THE PARTIES AGREE THAT:**

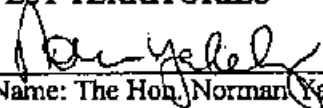
1. The date by which the condition set out in Article 2.3 of the Concession Agreement must be satisfied is extended from December 31, 2007 to January 25, 2008, so that all rights, obligations and liabilities of GNWT and the Project Company under the Concession Agreement shall be subject to and conditional upon the Lender agreeing to advance the Debt on or before January 25, 2008, or such later date as may be mutually agreed upon between GNWT and the Project Company, each acting reasonably.

2. All capitalized terms used in this Agreement and not otherwise defined herein have the meanings attributed to such terms in the Concession Agreement.
3. This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same agreement.
4. This Agreement may be executed and delivered by facsimile or PDF electronic transmission, and each of the Parties may rely on such signature as though such signature were an original signature.
5. This Agreement amends Article 2.3 of the Concession Agreement. The remaining terms of the Concession Agreement continue unamended.
6. This Agreement is effective December 31, 2007, notwithstanding that it may be executed on a later date.

IN WITNESS WHEREOF the parties have executed this Agreement.

**GOVERNMENT OF THE  
NORTHWEST TERRITORIES**

Per: \_\_\_\_\_

  
Name: The Hon. Norman Yakeleya  
Title: Minister of Transportation

**DEH CHO BRIDGE CORPORATION LTD.**

Per: \_\_\_\_\_

  
Name: Berna Landry  
Title: Director

Per: \_\_\_\_\_

  
Name: Michael Vandell  
Title: Director



**AMENDMENT AGREEMENT NO. 2**

**THIS AMENDMENT AGREEMENT** made as of the 25<sup>th</sup> day of January, 2008.

**BETWEEN:**

**THE MINISTER OF TRANSPORTATION ON  
BEHALF OF THE GOVERNMENT OF THE  
NORTHWEST TERRITORIES AND THE  
COMMISSIONER OF THE NORTHWEST  
TERRITORIES**

(hereinafter called "GNWT")

**OF THE FIRST PART;**

- and -

**DEH CHO BRIDGE CORPORATION LTD.,** a  
corporation incorporated under the laws of the Northwest  
Territories

(hereinafter called the "Project Company")

**WHEREAS:**

GNWT and the Project Company have entered into a concession agreement made as of the 28<sup>th</sup> day of September, 2007, as amended by agreement effective as of December 31, 2007 (collectively, the "Concession Agreement") providing for the development, design, construction, operation, maintenance and management of the Facility (as such term is defined in the Concession Agreement) in accordance with and subject to the terms and conditions contained therein;

GNWT and the Project Company have agreed to amend the Concession Agreement as hereinafter set out;

**NOW THEREFORE** in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The parties acknowledge, confirm and agree that the Concession Agreement is hereby amended as follows:
  - (a) The following is added to the definition of "Additional Funds Outstanding Balance" after the reference to "otherwise)" in the sixth line thereof:

" , amounts (if any) paid by GNWT in respect of the reinvestment interest rate swap arrangements,"

- (b) The following is added to the end of the definition of "Base Year Operating Costs":
- "or such greater amount as may be designated in writing by GNWT in its Sole Discretion";
- (c) Subsection 2.1(a) is deleted in its entirety and replaced with the following:
- "on or before February 15, 2008 or such later date as may be designated in writing by GNWT (but in any event no later than February 22, 2008), the Project Company shall have provided to GNWT commitments for the Invested Equity from such Persons and on such terms and conditions as are satisfactory to GNWT, acting reasonably";
- (d) Each of the references to "December 31, 2007" in Subsections 2.1(b), 2.1(c)(i), 2.1(d), 2.1(e), 2.1(f), 2.1(g) and 2.1(h) is deleted and replaced with the following "February 15, 2008 or such later date as may be designated in writing by GNWT (but in any event no later than February 22, 2008)";
- (e) Subsection 2.1(c)(i) is amended by adding the following at the end thereof:
- "including any reinvestment swap arrangements and for greater certainty, the Project Company shall have entered into a commitment for the Ineligible Cost Overrun Facility in an amount, with a lender and on terms and conditions satisfactory to GNWT, acting reasonably; and";
- (f) Subsection 2.1(c)(ii) is deleted in its entirety and replaced with the following:
- "(ii) on or before February 15, 2008 or such later date as may be designated in writing by GNWT but in any event not later than February 22, 2008, the Debt shall have been advanced by the Lender into the Debt Service Account and the Construction Account in accordance with the terms of the Debt.";
- (g) The third and fourth sentences of Section 2.2 are deleted in their entirety and replaced with the following:
- "If any condition in Section 2.1 has not been satisfied or waived within the applicable time period set out in Section 2.1, GNWT may at any time within 30 days thereafter give notice to the Project Company terminating this Agreement.";
- (h) Section 2.3 is deleted in its entirety and replaced with the following:
- "All rights, obligations and limitations of GNWT and the Project Company under this Agreement shall be subject to and conditional upon the Lender advancing the Debt into the Debt Service Account and the Construction Account in accordance with the Debt on or before February 15, 2008 or such later date as may be designated in writing by GNWT (but in any event no later than February 22, 2008)";

- (i) Section 3.11 is amended by adding the following at the end thereof:

"The Project Company has engaged Jivkov Engineering Limited (the "Consultant") to perform a number of services in connection with the Facility, including the preparation of all design documents required for the Facility (including all drawings, plans, sketches, specifications and outline specifications, building systems, models, graphic representations, computer-generated designs, and related materials prepared in the course of the design of the Facility, issued for construction documents and as-built drawings) (collectively, the "Design Documents"). The Consultant has engaged J.R. Spronken & Associates Ltd. (the "Subconsultant") as a subconsultant to assist in the review and preparation of the Design Documents and as the design engineer of record in respect of same. It is also contemplated that the Project Company may engage future consultants and subconsultants to prepare Plans and Specifications in addition to the Design Documents from time to time in the course of the development, design, construction, operation, management, maintenance and rehabilitation of the Facility.

In furtherance of and without limiting the foregoing provisions of this Section 3.11, the Project Company hereby grants to GNWT an irrevocable, royalty free, perpetual and non-exclusive licence, including the right to grant sublicences, to use, modify and reproduce the Design Documents and the other Plans and Specifications and the intellectual property rights associated therewith (including all copyright in and to the Design Documents and the other Plans and Specifications and all industrial designs in or arising from any part of the Design Documents) (collectively, the "Intellectual Property Rights") for any and all purposes relating to the Facility and without limiting the foregoing if there is any termination of this Agreement (whether by effluxion of time or by exercise of any right of either GNWT or the Project Company under this Agreement), the Project Company shall, without any further consideration, assign to GNWT all right, title and interest of Project Company in and to the Design Documents and the other Plans and Specifications and the Intellectual Property Rights (including any and all ownership rights and licenses which Project Company has in connection therewith or relating thereto) and shall execute and deliver and cause to be executed and delivered all such documentation as GNWT may reasonably request in connection therewith. Without limiting the foregoing, GNWT shall have the right to assign the benefit of the foregoing licence to any lender(s) in connection with the grant of a security interest in or relating to the Facility, a purchaser, concessionaire or lessee of the Facility or any subsequent assignee of same.

At the request of GNWT from time to time, the Project Company shall promptly deliver to GNWT a complete set of all Design Documents and the other Plans and Specifications together with any predesign, conceptual design, site planning or other studies prepared by the Consultant or any future consultant or subconsultant in a hard copy, together with an electronic copy in readable form (including MS Word or Auto CAD). In the event of the Project Company's failure to comply with its obligations hereunder, the parties hereby agree that GNWT shall be entitled, in addition to any other remedies to which it may be entitled, to appropriate

equitable relief, including the remedy of specific performance, as money damages will be an inadequate remedy with respect to receipt of such Design Documents and other Plans and Specifications by GNWT.

The Project Company represents and warrants to GNWT that it has or will have the right and authority to provide the licences and assignments granted or to be granted to GNWT hereunder and shall indemnify and hold harmless GNWT from any Losses relating to any allegation, complaint, suit or action brought against GNWT or any other Person(s) to whom GNWT may assign or grant a licence or sublicense with respect to the Design Documents, the other Plans and Specifications and/or the Intellectual Property Rights based on a claim that any of the Design Documents, the other Plans and Specifications the Intellectual Property Rights or the use of same as contemplated by this Agreement constitute an infringement of any intellectual property rights of any third party. The Project Company undertakes to require the Consultant and the Subconsultant and the other applicable consultants and subconsultants to obtain, from each of their employees and other individuals engaged by the Consultant or the Subconsultant or other future consultants or subconsultants in the preparation of the Design Documents, the other Plans and Specifications and Intellectual Property Rights, waivers of their moral rights, including the right of identity and the right of integrity, to give effect to these provisions in such manner as to ensure that GNWT shall be entitled to enforce such obligations and waivers against such Persons."

- (j) The following is added as Section 4.17:

"4.17 Invested Equity

After the advance of the Debt into the Debt Service Account and the Construction Account, the Project Company shall continue to use its reasonable commercial efforts to obtain the Invested Equity (which, for greater certainty, shall in the aggregate with the Invested Equity committed prior to the advance of the Debt into the Debt Service Account and the Construction Account be in an amount Approved by GNWT and not to exceed \$5,000,000.00) from Person(s) and on terms and conditions satisfactory to GNWT, acting reasonably, and without limiting the foregoing, so as to at all times ensure compliance with the Restriction on Transfer Agreement. The Project Company shall provide regular periodic updates and reports to GNWT as to the progress and status of these efforts. The Project Company shall use all reasonable commercial efforts to enforce the commitments for Invested Equity Approved by GNWT.

The Project Company shall use the Invested Equity and amounts under the reinvestment interest rate swap to fund Total Facility Capital Costs and shall cause same to be deposited into the Construction Account as soon as reasonably practicable after receipt of same. Notwithstanding the foregoing, GNWT may direct the Project Company to apply or place into escrow on terms designated by GNWT, acting reasonably, as and when received any Invested Equity committed after the closing of the Debt to be utilized to repay or prepay (with applicable

make whole payments) that portion of the Debt which was advanced in lieu of Invested Equity. The Project Company shall provide to GNWT a detailed accounting of any expenditure or application of the Invested Equity forthwith following any such expenditure or application. The Project Company shall not prepay any portion of the Debt without the prior consent of GNWT which may be withheld in the Sole Discretion of GNWT.

For greater certainty, the commitments for the Invested Equity Approved by GNWT and amounts under the reinvestment interest rate swap shall form part of the Project Company's Interest."

- (k) Section 4.6 is amended by adding the following at the end thereof:

"Without limiting the foregoing, the Project Company shall cause the Constructor to deliver the letter of credit required under the Construction Contract to the Project Company (or as may otherwise be determined by the Lender, GNWT and the Project Company) within thirty (30) days after the initial advance of the Debt into the Debt Service Account and the Construction Account or such later date as GNWT may agree to in writing. For greater certainty, such letter of credit shall form part of the Project Company's Interest.";

- (l) The first sentence of the last paragraph of Section 11.2 is deleted in its entirety and replaced with the following:

"If the Traffic Availability Date has not occurred by May 1, 2011, GNWT will be obligated to (i) pay a Sublease Payment equal to the interest only on the Debt into the Debt Service Account on May 1, 2011; and (ii) make the payment described in Subsection 11.2(a) above commencing and continuing from November 1, 2011 as though the Traffic Availability Date had occurred on May 1, 2011.";

- (m) Subsections 11.3(b), 11.3(c) and 11.3(d) are amended by adding a reference to and "Subsection 18.2(c)" after each reference to "Section 18.1" therein;

- (n) The following is added as new Section 11.8:

**"11.8 Notice of Section 46 of the *Financial Administration Act***

GNWT hereby provides notice to the Project Company and the Project Company, hereby acknowledges receipt of notice from GNWT, of the provisions of Section 46 of the *Financial Administration Act* of the Northwest Territories."

- (o) The following shall be added at the beginning of each of Subsections 13.2 (b), and 13.2(c):

"Subject to the applicable exceptions and qualifications contained in the legal opinion with respect to GNWT delivered to the Lender on the closing of the Loan,"; and

- (p) The following is added to the end of Section 17.1(e):

"or, if any time there is an event of default with respect to the Project Company or a termination event under the reinvestment interest rate swap arrangements or GNWT is required to make any payment to or to the order of the swap counterparty in respect of the reinvestment interest rate swap arrangements pursuant to any agreement with the swap counterparty;"

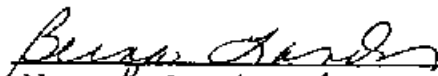
- (q) Section 25.6 is amended by adding the words "or the repayment of the Debt, whichever is earlier" at the end thereof.
- 2. Save and except as expressly amended pursuant to the provisions of this Agreement, the Concession Agreement remains in full force and effect in accordance with its terms.
- 3. This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same agreement. This Agreement shall not be binding upon any party until it has been executed by each of the parties and delivered to all other parties.


IN WITNESS WHEREOF the parties have executed this Agreement.

THE MINISTER OF TRANSPORTATION  
ON BEHALF OF THE GOVERNMENT OF  
THE NORTHWEST TERRITORIES AND  
THE COMMISSIONER OF THE  
NORTHWEST TERRITORIES

Per: 

DEH CHO BRIDGE CORPORATION LTD.

Per:   
Name: Berna Landry  
Title: Director

Per:   
Name: Michael Vandell  
Title: Director

### **AMENDMENT AGREEMENT NO. 3**

**THIS AMENDMENT AGREEMENT** made as of the 22<sup>nd</sup> day of February, 2008.

**BETWEEN:**

**THE MINISTER OF TRANSPORTATION ON  
BEHALF OF THE GOVERNMENT OF THE  
NORTHWEST TERRITORIES AND THE  
COMMISSIONER OF THE NORTHWEST  
TERRITORIES**

(hereinafter called "GNWT")

**OF THE FIRST PART;**

- and -

**DEH CHO BRIDGE CORPORATION LTD., a  
corporation incorporated under the laws of the Northwest  
Territories**

(hereinafter called the "Project Company")

**WHEREAS:**

GNWT and the Project Company have entered into a concession agreement made as of the 28<sup>th</sup> day of September, 2007, as amended by agreement effective as of December 31, 2007 and by agreement made as of January 25, 2008 (collectively, the "Concession Agreement") providing for the development, design, construction, operation, maintenance and management of the Facility (as such term is defined in the Concession Agreement) in accordance with and subject to the terms and conditions contained therein;

GNWT and the Project Company have agreed to further amend the Concession Agreement as hereinafter set out;

**NOW THEREFORE** in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The parties acknowledge, confirm and agree that the Concession Agreement is hereby amended as follows:
  - (a) The following is added to the definition of "Additional Funds Outstanding Balance" immediately after the reference to "otherwise)" in the sixth line thereof:

", amounts (if any) paid by GNWT in respect of the Ineligible Cost Overrun Facility pursuant to Section 20.6 hereof (or equivalent provisions under any



agreement with the Ineligible Cost Overrun Facility Lender), amounts, if any, paid by GNWT on account of Total Facility Capital Costs or Project Costs (as defined in the Loan Documents) or to remedy any Cost to Complete (as defined in the Loan Documents) shortfall if the Invested Equity for which there is a commitment Approved by GNWT as at the closing of the Base Debt is not received by the Project Company and deposited into the Construction Account as and when required to fund Total Facility Costs or Project Costs or to remedy any Cost to Complete shortfall under the Loan Documents or as otherwise may be required under the Loan Documents,"

- (b) The following is added to both the definition of "Base Return Amount" immediately after the word "Equity" in the third line thereof and to the definition of "Enhanced Return Amount" after the word "Equity" in the fourth line thereof:

"to the extent, without duplication, such Invested Equity has then either, actually been received and deposited into the Construction Account or received and deposited into an escrow account pursuant to a GNWT direction under Section 4.17, in either case prior to the earlier of the Traffic Availability Date or November 1, 2010 or is deemed to be Invested Equity pursuant to the definition of Invested Equity in this Agreement."

- (c) The following definition is added after the definition "GMP":

"GMP Reduction Agreement" means the GMP Reduction Agreement made effective February 22, 2008 between the Project Company, Atcon Construction Inc., Jivko Jivkov and Andrew Gamble."

- (d) The following definition is added before the definition of "Ineligible Cost Overrun":

"Incremental Invested Equity" has the meaning attributed to such term in the GMP Reduction Agreement."

- (e) The following definition is added after the definition of "Ineligible Cost Overrun Facility":

"Ineligible Cost Overrun Facility Lender" has the meaning attributed to it in Section 20.6."

- (f) The following is added to the definition of "Invested Equity" at the end thereof:

"and shall be deemed to include the following amounts (which amounts, for greater certainty shall be included in the calculation of the maximum amount of the Invested Equity permitted hereunder):

- (a) the \$600,000 aggregate decrease in the GMP's pursuant to the GMP Reduction Agreement less any Incremental Invested Equity provided that if any of the Development Agreement, Design Agreement or Construction Agreement is terminated, the amount of the reduced GMP attributable to

such terminated agreement shall no longer be deemed to be Invested Equity; and

- (b) cash contributions made by the Federal Government to the Project Company on account of Total Facility Capital Costs which are received and deposited into the Construction Account or received and deposited into an escrow account pursuant to a GNWT direction under Section 4.17, in either case prior to the earlier of the Traffic Availability Date or November 1, 2010.”.
- (g) The definition of “Fundamental Matter” is amended by adding the following at the end thereof:

“Without limiting the foregoing, any amendment, modification, supplement, termination, cancellation, forfeiture, surrender or waiver of rights or obligations of or with respect to the GMP Reduction Agreement shall be deemed to be a Fundamental Matter and shall required the Approval of GNWT.”.
- (h) The definition of “Laws and Regulations” is amended by added a reference to “territorial” after the word “federal” in the second line thereof.
- (i) Section 4.17 is amended by adding the following after the reference to “Invested Equity” in the sixth line of the second paragraph thereof:

“(other than Incremental Invested Equity)”.
- (j) The first sentence of the last paragraph of Section 11.2 is deleted in its entirety and replaced with the following:

“If the Traffic Availability Date has not occurred by December 31, 2010, GNWT will be obligated to (i) pay a Sublease Payment equal to the interest only on the Debt into the Debt Service Account on May 31, 2011; and (ii) make the payment described in Subsection 11.2(a) above commencing and continuing from November 1, 2011 as though the Traffic Availability Date had occurred on May 1, 2011.”;
- (k) The following is added to the end of Section 17.1(e):

“or, if any time or there is an event of default with respect to the Project Company under the Ineligible Cost Overrun Facility or GNWT is required to make any payment to or to the order of the Ineligible Cost Overrun Facility Lender in respect of amounts owing thereunder pursuant to Section 20.6 (or equivalent provisions under any agreement with the Ineligible Cost Overrun Facility Lender), or if any time, all or any part of the Invested Equity for which there is a commitment Approved by GNWT as at the closing of the Base Debt is not received by the Project Company and deposited into the Construction Account as and when required to fund Total Facility Capital Costs or Project Costs (as defined in the Loan Documents) shortfall or to remedy any Cost to Complete (as

defined in the Loan Documents) shortfall or as otherwise may be required under the Loan Documents;”.

- (l) Section 18.1(a) is amended by adding the following after the reference to “17.1(c)” in the first line thereof “17.1(d) (with respect to the OMM Agreement if the Project Company is the Operator thereunder),”.
- (m) Section 20.3 is amended by adding the words “and the Ineligible Cost Overrun Facility Lender” after each reference to “Lender” therein.
- (n) Section 20.6 is deleted in its entirety and replaced with the following:

**“20.6 Rights of Ineligible Cost Overrun Facility Lender**

If, following:

- (a) the occurrence of the Traffic Availability Date and (i) a Termination Event and termination of this Agreement as a result thereof or (ii) a termination of this Agreement pursuant to Section 21.1 (without duplication to any Termination Damages); or
- (b) December 1, 2013 (if the Traffic Availability Date has not yet occurred),

an amount remains outstanding and unpaid on the Ineligible Cost Overrun Facility which is attributable to advances by the lender of the Ineligible Cost Overrun Facility (the “Ineligible Cost Overrun Facility Lender”) of amounts in respect of Ineligible Cost Overruns (the “Ineligible Cost Overrun Advances”), then, subject to Section 20.7 hereof, GNWT shall pay to the Ineligible Cost Overrun Facility Lender the sum of Two Hundred and Twenty-Five Thousand Dollars (\$225,000) per year, or such less amount as is then outstanding and unpaid in respect of the Ineligible Cost Overrun Advances, until such time as all principal, interest and other amounts outstanding in respect of the Ineligible Cost Overrun Advances have been repaid in full. For greater certainty, the obligation of GNWT to repay to the Ineligible Cost Overrun Facility Lender the Ineligible Cost Overrun Advances hereunder pursuant to Subparagraph (b) above shall end and be of no further force or effect upon the occurrence of the Traffic Availability Date at any time after December 31, 2013 (provided, for greater certainty, that subparagraph (a) above shall continue to apply in accordance with the other provisions hereof).

For the avoidance of doubt, except in the event of any ongoing dispute with respect to the payment by GNWT of any amount outstanding in respect of the Ineligible Cost Overrun Advances which has either been referred for determination to this dispute resolution process under Article 24 or a comparable dispute resolution process established under the agreement contemplated in Section 20.3, or any delay in payment by GNWT, the obligation of GNWT under this Section 20.6 shall end on the Concession Termination Date or such earlier date that the Ineligible Cost Overrun Advances have been fully repaid or, in the case only of the obligation of GNWT to repay to the Ineligible Cost Overrun

Facility Lender the Ineligible Cost Overrun Advances hereunder pursuant to Subparagraph (b) above on the earliest of the occurrence of the Traffic Availability Date, January 1, 2049 or the date that the Ineligible Cost Overrun Advances have been fully repaid (provided, for greater certainty, that subparagraph (a) above shall continue to apply in accordance with the other provisions hereof). In connection with the foregoing and notwithstanding anything to contrary contained in the Ineligible Cost Overrun Facility documentation, GNWT shall have the right (but not the obligation) to repay or prepay in whole or in part by a lump sum payment the outstanding Ineligible Cost Overrun Advances at any time after GNWT becomes obligated to make payment on account of the Ineligible Cost Overrun Advances pursuant to this Section 20.6 on at least 5 Business Day Notice and without bonus or penalty (and provided any Bankers Acceptance can not be repaid prior to their stated maturity).".

- (o) Section 20.7 is amended by deleting each reference to "Lender" therein (except in Section 20.7(b)) and replacing same with the reference to "Ineligible Cost Overrun Facility Lender".
- (p) Section 20.7(b) is deleted in its entirety and replaced with the following:
  - "(b) prior to any advance being made by the Ineligible Cost Overrun Facility Lender under the Ineligible Cost Overrun Facility:
  - (i) The Ineligible Cost Overrun Facility Lender shall have received written confirmation from GNWT that:
    - (A) GNWT has no knowledge of any Project Company Default or Project Company Event of Default under the Concession Agreement which has occurred and is continuing or would by reason thereof, occur after the funding of the requested Cost Overrun;
    - (B) GNWT has approved the amount of the advance being made under the Ineligible Cost Overrun Facility; and
    - (C) GNWT has no knowledge of any material adverse change in the financial condition or business of the Project Company which has occurred and is continuing or would by reason thereof occur after the funding of the requested Cost Overrun.
  - (ii) The Ineligible Cost Overrun Facility Lender and GNWT shall have received written confirmation from the Lender that the Lender has no knowledge of a Loan Default or Loan Event of Default under the Loan Documents which is continuing or would, by reason thereof occur after the funding of the requested Cost Overrun; and
  - (iii) The Ineligible Cost Overrun Facility Lender and GNWT shall receive written confirmation from the Independent Engineer engaged for the

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT.**

**THE MINISTER OF TRANSPORTATION  
ON BEHALF OF THE GOVERNMENT OF  
THE NORTHWEST TERRITORIES AND  
THE COMMISSIONER OF THE  
NORTHWEST TERRITORIES**

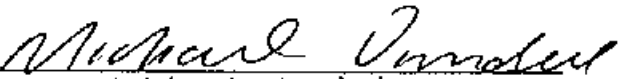
Per: \_\_\_\_\_

Name: The Honourable Norman Yakeleya

Title: Minister of Transportation

**DEH CHO BRIDGE CORPORATION LTD.**

Per: \_\_\_\_\_



Name: Michael Vandell

Title: President

Per: \_\_\_\_\_

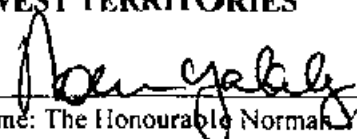
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Title:

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT.**

**THE MINISTER OF TRANSPORTATION  
ON BEHALF OF THE GOVERNMENT OF  
THE NORTHWEST TERRITORIES AND  
THE COMMISSIONER OF THE  
NORTHWEST TERRITORIES**

Per: \_\_\_\_\_

  
Name: The Honourable Norman Yakeleya  
Title: Minister of Transportation

**DEH CHO BRIDGE CORPORATION LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Schedule 1

Deh Cho Bridge Corporation Ltd

**C\$165,438,596.56 3.17% Senior Secured Notes due December 1, 2046**

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**Issuer:** Deh Cho Bridge Corporation Ltd. (the "Issuer").

**Principal Amount:** \$165,438,596.56

**Term:** If TAD is achieved on or before December 31, 2010, the bond pays interest-only until June 1, 2011. Commencing on June 1, 2011 amortization payments will be made semi-annually with the final payment on December 1, 2045.  
If TAD is not achieved on or before December 31, 2010, the bond pays interest-only until December 1, 2011. Commencing on December 1, 2011 amortization payments will be made semi-annually with the final payment on June 1, 2046.

**Benchmark Bond:** The 4%, December 1, 2031 Real Return Government of Canada Bond.  
Bid Yield: 2.07%  
Price: \$136.093

**Credit Spread:** +110 basis points over the bid yield based on the offer side price of Benchmark Bond

**Coupon:** 3.17% which is equal to the Benchmark Bond Bid Yield + 110bps.

**Price:** \$100

**Final Maturity Date:** June 1, 2046 (final payment date may be up to one year earlier depending on TAD)

**Interest:** Interest payments will be payable semi-annually on the 1st of June and December for the term of the Bond, starting on June 1, 2008. Interest paid will be computed by multiplying the fixed coupon by the nominal amount of principal outstanding on a given payment date.

**Redemption:** The Bond is redeemable prior to maturity, at the Issuer's option, in whole at any time or in part from time to time on not more than 60 and not less than 30 days' prior notice at the higher of: the Redemption Price (+27.5 bps) and par, together with the accrued and unpaid interest to the date fixed for redemption.

**Use of Proceeds:** To pay for Project Costs related to the construction of a toll bridge across the Mackenzie River.

**Pricing Date:** February 15, 2008.

**Settlement Date:** No later than February 22, 2008

**Sole Agent:** TD Securities

**Buyers:** Ontario Teachers' Pension Fund \$87,889,254.44  
Sunlife and Affiliates \$77,549,342.12

## SCHEDULE 2

### REQUIRED PROVISIONS IN PROJECT AGREEMENTS

This Schedule sets out those terms and conditions required to be included in each of the Project Agreements (unless otherwise specified).

For the purposes of this Schedule, the term "Contracting Party" means the party to the applicable Project Agreement other than the Project Company, being any of the Developer, the Designer or the Constructor, as the case may be.

- (a) Undertaking and Confirmation – The Contracting Party shall execute and deliver to GNWT the Undertaking and Confirmation attached hereto as Schedule "I" concurrently with the execution and delivery of this Agreement
- (b) No Amendment, Modification, etc. - The Contracting Party hereby acknowledges and agrees with GNWT that the Project Agreement may not be amended, modified, altered, terminated, forfeited, cancelled or surrendered without the prior written approval of GNWT.
- (c) Waiver – The Contracting Party hereby acknowledges and agrees with GNWT that the Project Company shall not waive, excuse, condone or in any manner release or discharge any party to the Project Agreement from any covenants, conditions, obligations or agreements to be performed or observed by such party, without the prior written approval of GNWT.
- (d) Default/Termination of Project

Each Project Agreement shall include the following provisions:

- (i) This Agreement shall be terminated (at the option of GNWT) upon the termination by GNWT of the Concession Agreement, without liability or cost to GNWT, other than cancellation payments or other costs of termination expressly provided for in this Agreement.
- (ii) The Contracting Party shall deliver written notice to GNWT of any default or breach of this Agreement by the Project Company at the address set out below:  
  
P.O. Box 1320  
Yellowknife, NT  
X1A 2L9  
CANADA  
Attention: Director Transportation Planning
- (iii) The Contracting Party shall not assign its interest (in whole or in part) in or under this Agreement without the prior written approval of GNWT (which may not be unreasonably withheld).



- (iv) No notice of default to the Project Company shall be valid unless and until such notice is also given to GNWT and any time period to remedy any such default shall commence to run only from the date GNWT receives such notice and if GNWT remedies such default, the Contracting Party shall be precluded from taking any further action with respect to such default.
- (v) The interest of the Project Company under this Agreement shall be assigned to GNWT (at the option of GNWT) as security for the obligations of the Project Company to GNWT under the Concession Agreement, and upon the occurrence of an Event of Default under the Concession Agreement, GNWT may, at its option, upon written notice to the Contracting Party, exercise the rights and assume the obligations of the Project Company hereunder; provided, however, that until GNWT has given such notice, nothing herein contained shall be deemed to create any contractual or other liability upon GNWT for the performance of obligations under this Project Agreement and the Project Company shall be fully responsible for all of its obligations and liabilities (if any) under this Project Agreement; and provided further that GNWT shall only be liable in respect of the period of time during which the obligations under this Project Agreement have been assumed by GNWT.
- (e) Laws and Regulations - The Contracting Party agrees that during the Term, to the extent applicable to it, it shall comply with and shall cause the Facility and the development, design, construction, operation, management, maintenance and rehabilitation thereof to be in compliance with all Laws and Regulations, Facility OMM Standards and Requirements, Technical Specifications and Standards and Required Third Party Approvals.
- (f) Indemnities, Insurance and Bonding – The Contracting Party agrees that, during the Term, it will maintain insurance and provide such bonding and indemnities as GNWT determines to be necessary, acting reasonably, or as provided for in the form of agreement Approved by GNWT.
- (g) The following provisions shall be included in the OMM Agreement and in the case of paragraph (iv), in the other Project Agreements as well:
  - (i) Subject to paragraph (ii), the Operator shall not close or permit to be closed all or any portion of the Facility and shall permit and provide unrestricted access to the Facility by all vehicles and shall cause the Facility to be continuously opened and operated for use by the public 24 hours a day every day during the Term except only for closures or stoppages arising as a result of Force Majeure or the application of Ministry Safety Standards.
  - (ii) Disruptions in the operation of the Facility shall be permitted only to the extent necessary to perform the OMM Work at the times, in the manner and for the duration set out in the Facility OMM Standards and Requirements. Without limiting the foregoing, the Operator shall manage

and schedule the OMM Work to minimize any permitted disruptions to the operation of the Facility and inconvenience to users of the Facility.

- (iii) The Operator shall use its best efforts to minimize or eliminate stoppages in the operation or closures of the Facility caused by Force Majeure or the application of Ministry Safety Standards.
- (iv) To the extent applicable, the Contracting Party shall not permit any portion of the Facility to be used by the public prior to the Traffic Availability Date and shall take all reasonable steps necessary to ensure that this provision is complied with at all times.
- (h) The following provisions shall be included in each of the Development Agreement, the Design Agreement and the Construction Agreement:
  - (i) Delivery Plan The Contracting Party shall deliver a Delivery Plan to the Project Company which shall set out the co-ordination and scheduling of the Work to be performed hereunder. The Contracting Party covenants and agrees to comply with the Delivery Plan, subject only to permitted delays.
  - (ii) GMP and Adjustments to GMP – The Contracting Party shall perform or cause to be performed the Work for a price not to exceed the GMP, which GMP shall only be adjusted for:
    - (A) change orders initiated or approved by GNWT;
    - (B) Eligible Cost Overruns; and
    - (C) Ineligible Cost Overruns, provided that they have not arisen by reason of the negligence, wilful misconduct, act or omission of, or are not otherwise caused by, the Contracting Party, and provided further that, upon the occurrence of an Ineligible Cost Overrun, the Project Company and the Contracting Party shall determine who, as between the Project Company, the Developer, the Designer and/or the Constructor is responsible for such Ineligible Cost Overrun.
  - (i) Annual Fixed OMM Price, OMM Agreement – The OMM Agreement shall provide for an annual fixed price to be paid to the Operator equal to the Annual Operating Costs in the applicable calendar year, which may only be adjusted for and in respect of a change order initiated or approved by GNWT.
  - (j) Design Documents and Intellectual Property, Design Agreement – The Design Agreement shall provide the Project Company with:
    - (i) Ownership of all design documents required for the Project (including all drawings, plans, sketches, specifications and outline specifications, building systems, models, graphic representations, computer-generated designs, and related materials prepared in the course of the design of the

Project and construction drawings) (collectively, the "Design Documents").

- (ii) An irrevocable, non-exclusive, royalty-free license in perpetuity to use, modify and reproduce the Design Documents and the intellectual property rights associated with the Design Documents (including all copyright in and to the Design Documents and all industrial designs in or arising from any part of the Design Documents) (collectively, the "Intellectual Property") for any and all purposes relating to the Project, including, without limitation, for the purposes of constructing, completing, operating, maintaining, repairing, upgrading, refurbishing, replacing, rehabilitating, altering, rebuilding, or modifying the Project and to amend or have amended the Design Documents as may be required by the Project Company or the GNWT for any such purposes.
- (iii) The right to grant sub-licenses and assign the benefit of this license and the right to grant sublicenses to (A) GNWT or (B) any lender(s) in connection with the grant of a security interest in the Project, (C) a purchaser, lessee or concessionaire of the Project or (D) any subsequent assignee of any of same (collectively, a "Beneficiary").
- (iv) A commitment from the Designer to require each of its employees and other individuals engaged by the Designer in preparation of the Design Documents and the Intellectual Property to waive their moral rights, including the right of identity and the right of integrity and to ensure that the Project Company and each Beneficiary shall be entitled to enforce such waivers against such employees and other individuals; and
- (v) A commitment from the Designer to produce such documents and perform such acts as may be required to fully and effectively assure to the Project Company, or any Beneficiary, that it has the rights set out in (i) through (iv) of this section (j).
- (k) Fundamental Matters – The Project Company shall not exercise any right, initiate any action, step or proceeding, or give any approval for or in respect of any Fundamental Matter, unless the exercise of such right, the initiation of such action, step or proceeding or the giving of such approval has been approved by GNWT, such approval not to be unreasonably withheld.
- (l) Integration of Toll System – The Contracting Party shall cooperate in all reasonable respects with GNWT in connection with and to ensure the efficient and effective integration of the Work with the installation, operation, maintenance and repair of the toll system.
- (m) Not an Agent - The Contracting Party expressly acknowledges and agrees that nothing in this Agreement shall be construed as authorizing:
  - (i) the Project Company to contract for or to incur any obligations on behalf of or to act as agent for GNWT; or

- (ii) the Contracting Party to contract for or to incur any obligations on behalf of or to act as agent for GNWT.
- (n) Audits –The provisions of Article 10 of the Concession Agreement are to be included in each Project Agreement with appropriate changes in context so that such provisions are made applicable to the Contracting Party, and so as to give GNWT the corresponding audit rights.
- (o) Progress Payments –Each Project Agreement is to include progress payment provisions.
- (p) Hand Back Standards, OMM Agreement –Upon the expiry of the Term or other termination of this Agreement, the following shall apply with respect to the Reversion Date:
  - (i) The Operator covenants that the Facility will be in the Required Condition on the Reversion Date and agrees to do and perform all such things as may be necessary to ensure that the Facility is in the Required Condition on the Reversion Date. "Required Condition" must be defined in any OMM Agreement to mean "at any time, the state or condition of the Facility required pursuant to the Handback Standards. The Handback Standards will be drafted by GNWT and will be appended to the OMM Agreement as a Schedule.
  - (ii) Without limiting the obligation of the Operator under paragraph (i) to ensure that the Facility is in the Required Condition on both the scheduled Reversion Date or a Reversion Date that occurs earlier than the day following the expiry of the Term, and solely to facilitate an orderly transition of control and operation of the Facility, GNWT shall, not later than two (2) years, one (1) year and three (3) months prior to the scheduled Reversion Date, conduct comprehensive inspections of the Facility and advise the Project Company and the Operator as to the condition and functioning of the Facility and all of its elements and as to any work required to be undertaken and completed in order that the Facility will be in the Required Condition on the scheduled Reversion Date. Any such work shall be performed by the Operator as part of the OMM Work. If the Operator disagrees with GNWT's determination that work is required, the Operator may give a notice of dispute to GNWT and the Project Company within ten (10) Business Days of receipt of GNWT's determination and, in such event, the matter shall be resolved in accordance with Article 23 hereof. Failure by GNWT to inspect the Facility or any part thereof, shall not constitute a waiver of any of the rights of GNWT hereunder or any of the obligations or liabilities of the Operator hereunder. Inspection not followed by a notice to the Project Company and the Operator shall not constitute a waiver of the obligations or liabilities of the Operator or constitute an acknowledgement that there has been or will be compliance with this Agreement.

- (iii) On the Reversion Date, or as soon thereafter as GNWT is in a position to do so, GNWT shall advise the Project Company and the Operator whether GNWT concurs that the Facility is in the Required Condition.

**Schedule 3  
Deh Cho Bridge Concession Agreement**

**LANDS**

**Part 1 – Facility Description:**

Generally the Deh Cho Bridge Facility is described as:

- a. *a two-lane toll bridge, together with bridge approaches on the north and south sides to connect to existing NWT highway system, to be located near Fort Providence on the Mackenzie River (between N 10 564 853 E 5 003 908 and N 11 594 412 E 5 182 888), to include all improvements (including paving), signage (including all toll bridge entry and exit signage), chattels, machinery, equipment, materials, supplies, tools, appurtenances and fixtures forming a part thereof and used in connection therewith; [See Designer Drawings]*
- b. *all buildings, erections and structures, whether temporary or permanent, erected or located in, on, under or upon the Facility Lands from time to time, or used in connection therewith, excluding the systems, structures, facilities and equipment comprising or related to the Toll System;*
- c. *all other facilities, fixtures, appurtenances and tangible personal property, including inventories of any nature whatsoever contained on or attaching to the Facility Lands from time to time and/or used in connection therewith including any operation/administration centre; and*
- d. *all mechanical, electrical and other systems installed or used in connection with any of the foregoing;*

and includes the Facility Lands.

**Part 2- Facility Lands**

**[See map attached to this Schedule]**

For the purpose of this Schedule, Facility Lands described as follows:

Facility Lands means, collectively, the GNWT Lands and the Federal Lands as described herein.

The GNWT has administration and control of certain lands located within the area of the proposed Deh Cho Bridge. The GNWT has obtained a reserve from the Federal

Government of Canada for lands located on the south side of the Mackenzie River, for the purposes of constructing the Deh Cho Bridge. Both the GNWT Lands and Federal Lands are included in the attached drawing, Annex A. Once the bridge is constructed and the new road alignment is declared open to the public, the bridge will be included as part of the Yellowknife Highway, as described under the *Public Highways Act*.

During the Construction Phase, the GNWT will continue to operate the Public Highway and the ferry crossing the Mackenzie River within the Facility Lands, and shall require free and unobstructed access to these Facility Lands for this purpose.

### **Facility Lands – Construction Phase**

All lands as shown on the attached drawing, Annex A, and as outlined in red and further described as all of Lot 6 Group 863 Plan No. 53613 (C.S.L.R.) 663 (L.T.O.) and all of NWT Reserve numbers SK102 and SK103 and all those portions of the Yellowknife Highway (NWT No. 3), as described in the Public Highways Act, starting at the most south-easterly corner of Reserve No. SK 102, approximate station 23+150 and ending at the most northwesterly corner of NWT Reserve No. SK103, approximate station 25+820.

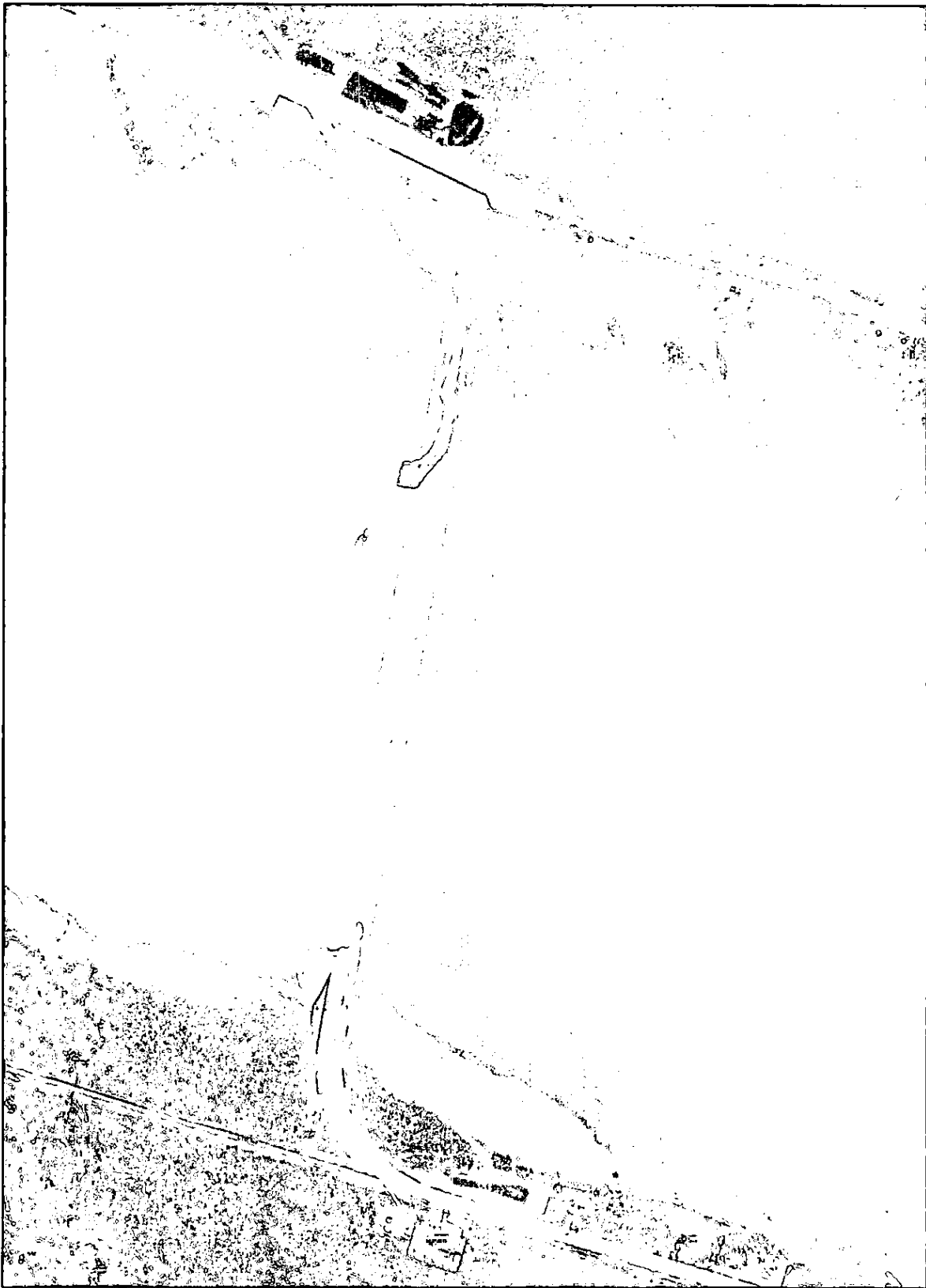
### **Facility Lands – Post-Construction – Operation Period**


All lands located between approximate Station 23+897.475, the beginning of the south approach abutment, and approximate Station 24+967.505, the end of the north approach abutment, excluding lands within the Mackenzie River riverbed with the exception of eight (8) Pier Pads located at approximate Stations; 23+999.99, 24+112.49, 24+224.99, 24+24337.49, 24+527.49, 24+639.99, 24+752.49, 24+864.99 and 954.99, each having a dimension of approximately 55 metres long by 50 metres wide, or 2,750 square metres (0.275 ha) each.

### **Part 3 – Facility Lands Availability Schedule**

The GNWT will make available or cause to be made available to the Project Company the Facility Lands in accordance with clause 3.2(a)(ii) of the Concession Agreement,

Excess Lands are to be released from the Lease granted by the GNWT in accordance with section 3.3 of the Concession Agreement.



 <p>Department of Municipal and Community Affairs</p>	<p>Tvswf zt !boe!Nbqajoh</p>	<p>Tdbrh,2;21-111</p>
<p>Mf hf oe</p> <p><input type="checkbox"/> EPUSf1f swf</p> <p><input type="checkbox"/> Tvswf zf e!Qbsdf rh</p> <p><input type="checkbox"/> Votvswf zf e!TI f udi f t</p>		<p>1 71 231 351 471 591</p> <p>----- Nf d w</p> <p>Eabx o;!CQ Ebd ;!Bvhvt u42-13118</p> <p>DPQZSJH! UHpwf son f oulpgu f !Opsa x f ! uU s;pa f ! / Ef qban f oulpgu f v;ojdqb;boe!Dpn n v;ojz;Bq;js /</p>



**Deh Cho Bridge SCHEDULE 4  
OPERATIONS, MAINTENANCE, MANAGEMENT  
AND REHABILITATION STANDARDS**

This schedule includes:

Part 1 General Agreement  
Part 2 OMMR Standards

**PART 1: General Agreement**

**1.1 Scope of Responsibility**

The Operator shall be responsible for all the OMM Work including the operation, management, maintenance and rehabilitation of the Facility (existing, under construction and to be built under the Agreement) in accordance with the Concession Agreement and all the applicable Schedules thereto. This obligation includes the supply of professional supervision services, the implementation and maintenance of OMM quality control and quality assurance programs, the supply of labour, materials and equipment and the performance of all of the duties and obligations, necessary for delivering all of the service of the Facility provided for pursuant to the Concession Agreement and Schedules thereto during the Bridge OMM Period.

**1.1.1 The Bridge**

The Operator shall be responsible for the OMM Work, including the operation, management, maintenance and rehabilitation of the Facility, including the Facility's approach ramps from the Facility pavement to a specific point.

The GNWT (DoT) will be responsible for:

- Maintenance and repair of the surface of the road that links the approaches to the Facility, except for items specified above as a responsibility of the Operator.
- Winter maintenance of all roads linking to the approaches
- Maintenance and energy costs of illumination systems on approach roads if they are directly and specifically required because of the Facility; rehabilitation of the links to the approach roads within the designated limits of the Facility.
- All other maintenance and repair activities related to the roads linking the facility to the NWT Highway system not specifically mentioned above.

The need for, and the scope and cost of rehabilitation, work on all approach roads shall be mutually agreed upon between the Operator (subject to the terms of the Agreement) and the GNWT before performance of the work. The above represents a standards operational protocol, which will apply in the absence of any other arrangement.

## 1.2 Operations and Management

The Operator shall undertake all OMM Work, including all assigned operational and management tasks, in accordance with all Laws and Regulations including the following:

- a) Federal and Territorial legislation
- b) DOT policies and procedural guidelines
- c) Other NWT government policy and procedural guidelines
- d) TAC and AASHTO Guides, Procedures and Standards as related to bridges, and approach ramps

The specific operational and management tasks that will be the responsibility of the Operator include the following;

### 1.2.1 Corridor Management

The Operator shall be responsible for operating and maintaining the Facility. The following guidelines and policies relate to corridor management.

**Claims** The Operator will be responsible for the administration of claims arising from the operation of the Facility.

**Access Control** Control of access to the Facility will be in accordance with DOT policies and procedures for the NWT Highways.  
  
(See access control provisions outlined in the *Highway Act* Sections 38 and 39).

**Advertising Signage** The Operator will be responsible for the administration of the standardized advertisements signage in accordance with DOT policy.  
  
Privately owned advertisements are not allowed within the Facility. The Operator will be responsible for enforcing the *Highway Act* and Regulations pertaining to advertisements within the Facility. DOT will be responsible for enforcement outside the Facility.

**Highway Usage** The GNWT will be responsible for the administration of and the issuance of highway usage permits and fee collection subject to and in accordance with the *NWT Highways Act* and the *Motor Vehicle Act*.

#### **Permits**

**Development** The Operator shall be permitted to undertake development initiatives

<b>Initiatives</b>	which would provide services to persons using the Facility subject to the approval of the GNWT and the provisions of the Agreement.
<b>Issuance of Permits</b>	DOT will, in accordance with its standard practices for similar highways located in the Territory, issue overweight and oversized permits for Vehicles using the Facility.

### **1.2.2 Incident Management**

The Operator will ensure the safety of the traveling public by providing traffic control when necessary and when requested by the appropriate policing agency. The Operator will also comply with the Environmental Management Plan in relation to hazardous materials or spills and to otherwise assist the GNWT in protecting the environment from any hazardous materials or spills. The Operator will have staff trained in the handling of hazardous materials and in response procedures.

### **1.2.3 Marketing and Public Communications**

The Operator will be responsible for the creation of any marketing organization to develop and implement an effective marketing plan to advertise the benefits of the Facility and ancillary uses to the traveling public (as required).

Included in this area of responsibility is the development and implementation of an effective Public Communications Plan to inform the traveling public of the condition of the Facility. (e.g. the status of the construction program, the sections of the Facility that are open, lane closures due to maintenance activities, etc.). All information to be released to the public must be coordinated with the GNWT (DOT Communications).

### **1.2.4 Safety Plan**

The Operator will be responsible for the safety of the general public, staff of the Operator, and the staff of its subcontractors, when carrying out the OMM Work, including the operation, maintenance and rehabilitation activities. The Operator will develop a comprehensive safety plan that will include the adequate training of staff to ensure that the work site traffic control as outlined in a Work Area Traffic Control Manual are followed in the day to day operation of the Facility.

### **1.2.5 Tolling**

The GNWT will be responsible for the operation and maintenance of the Toll System, in accordance with the Agreement. In addition, the GNWT is responsible for the security for the tolls collected and the actual toll collection. All toll facilities will be operational 24 hours a day, 365 days of the year and capture tolls for a minimum of 98% of the traffic volume.

Without limiting the audit rights and obligations set out in the Agreement, the GNWT will be responsible for arranging an annual audit of the toll revenues and collection costs by an independent auditor.

### **1.2.6 Weight Enforcement**

The GNWT DOT will provide a level of weight enforcement policing on the Facility consistent with normal daily operations similar to that provided on other highways. Should the Operator require additional weight enforcement policing over and above this level on the Facility or other highways in the NWT, it will be its responsibility to purchase this additional service from the Department of Transportation.

### **1.2.7 Policing**

The GNWT and RCMP will provide a level of policing on the Facility consistent with normal daily operations similar to that provided on other Territorial highways. Should the Operator require additional policing over and above this level on the Facility or other highways in the NWT, it will be the responsibility of the Operator to purchase this additional service from the GNWT.

### **1.2.8 Communications System**

The GNWT will be responsible for developing and installing a reliable communication system which will allow direct communication between all facets of the GNWT's Operations (toll facilities, operators, supervisors, etc.), DOT and the main maintenance facility close to the Bridge.

The Operator shall put in place an effective communication system to enable contact between vehicle operators, supervisory staff and other Operator personnel and the GNWT. During operations the Operator will be required to inform the GNWT DOT of the conditions of the Facility as changes in the weather demand.

### **1.2.9 Administration**

The Operator is responsible for supplying qualified staff to effectively manage the day-to-day OMM Work, including operations, maintenance and rehabilitation of the Facility in the most cost effective and efficient manner.

### **1.2.10 Reports and Documentation**

During the OMM Period, the Operator shall be required to submit monthly reports (technical and financial) in accordance with the Agreement. See reporting details.

## **1.3 Maintenance and Rehabilitation**

The Operator is responsible for undertaking all assigned maintenance and rehabilitation tasks of the components of the Facility as described in the Scope of Responsibility (Part 1) with the exception of equipment owned by utility companies, other Government Departments (such as the Canadian Coast Guard (if applicable)).

### **1.3.1 Routine Maintenance**

The Operator shall carry out all routine maintenance work and servicing on the bridge crossings and other Facility components including all equipment.

### **1.3.2 Periodic Maintenance**

The Operator shall carry out all periodic maintenance (cyclical maintenance activities such as line striping) and servicing on the bridge crossings and other Facility components including all equipment.

### **1.3.3 Repairs and Rehabilitation Program**

The Operator shall be responsible for undertaking all repairs and rehabilitation of the bridge structures and other Facility components based on the following criteria:

1. The Operator shall, as and when necessary, propose methods and procedures for the monitoring and repair of any defects and/or damage to an infrastructure component.
2. The Operator shall rehabilitate or reconstruct the bridge structure or other Facility components when the condition of the bridge structure or other Facility components has reached a point that routine maintenance is not economical to maintain the infrastructure component in a safe operating condition.
3. The Operator shall replace all bridge and other Facility infrastructure components, which have reached the end of their useful life.
4. The Operator shall not alter or modify any bridge structure or other Facility infrastructure component without the Approval of the GNWT.

### **1.3.4 Maintenance Facilities**

The Operator will be responsible for providing maintenance facilities, including deicing materials and waste management structures, and facilities from which the OMM Work, including the operation and maintenance of the Facility will be managed and conducted.

### **1.3.5 Minimizing Traffic Restrictions**

The Operator shall carry out all inspections, routine maintenance, repair and replacement work in such a way as to avoid undue delays to traffic in accordance with the Operations and Maintenance Standards set out in Part 2.0 of this Schedule.

### **1.3.6 Access to the Facility**

The Operator will be required to provide access and all assistance necessary to the GNWT staff and their respective agents in carrying out the following tasks:

1. To audit the structures and associated equipment;
2. To audit any inspections or work being carried out;
3. To audit the Facility and conditions;
4. To audit the Toll System;
5. To carry out works for which the Operator is not responsible.

The Operator shall have no claim for loss of revenue due to inspections or work carried out by the GNWT or others on their behalf.

#### **1.4 Requirements**

The Operator shall be responsible for ensuring the OMM Work, including the operation, management, maintenance and rehabilitation of all infrastructure improvements constructed in/or on the Facility Lands (existing, under construction and to be built under the Agreement) is performed in accordance with the Agreement including all the applicable Schedules thereto.

##### **1.4.1 Management Systems**

The Operator must use infrastructure management systems to monitor the operation and maintenance and rehabilitation of the Facility, including both the bridges and the approaches. The Operator shall utilize and implement as a minimum, the following systems in the preservation of the Facility infrastructure;

- Infrastructure Operations, Maintenance and Rehabilitation Management System
- Bridge Management System
- Pavement Management System
- Quality Management System

The information collected must be available to the GNWT in both electronic and manual format.

##### **1.4.2 Operation and Maintenance Standards**

The Operator shall complete all routine and periodic maintenance and rehabilitation to, as a minimum, the standards as included in Part 2 – Operations and Maintenance Standards of this Schedule. In addition, the policies and procedures contained in the following documents shall also be observed and performed in the course of all maintenance and rehabilitation work.

- Environmental Protection Plan,
- Work Area Traffic Control Manual,
- Highway Maintenance Management System Manual,

## Deh Cho Bridge Schedule 4 – Part I

- Bridge Maintenance Management System Manual,
- Sign Manual,
- Sign Catalogue,
- Field Guide on Environmental Protection Practices, for Highway Construction and Maintenance,
- Traffic Control Person Instructor's Manual

### **1.4.3 Inspections**

The Operator shall carry out a systematic number of inspections on the bridge and approach ramps as outlined in Part 2 – Operations and Maintenance Standards of this Schedule 1. Notwithstanding the provisions contained in Part 2 Operations and Maintenance Standards of this Schedule, it will be the Operator's responsibility to develop an inspection program based on the following criteria:

1. An inspection program shall be prepared which sets out the inspection intervals for each part of the Facility and the scope of its inspection.
2. Inspections shall be undertaken in accordance with an inspection plan approved by the GNWT.
3. The frequency of inspection shall relate to the vulnerability and criticality of the infrastructure components.
4. The reports for all inspections will be submitted according to this Schedule.

### **1.4.3 Environment**

During the OMM Period, the Operator must carry out all operational and maintenance activities in conformance with existing Laws and Regulations and the requirements of the Environmental Management Plan attached as part of the Agreement.

### **1.4.4 Quality Management**

The Operator shall observe, perform and implement the Quality Management Plan attached as Part of the OMM Agreement.

### **1.4.5 OMM Termination**

The Operator and the GNWT shall commence discussions with respect to a procedures for the transfer of the bridge, approach roads, equipment, documentation and all other related components of the Facility two (2) years prior to the Facility Return Date.

The Operator shall also transfer all technical documentation relating to the Facility to the Project Company at the end of the OMM Period, including all drawings, manuals and reports.

**Part 2:**

**Deh Cho Bridge – OMMR Standards**  
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## **BRIDGE STANDARD 401 ROUTINE BRIDGE INSPECTION**

### **401.1 OBJECTIVES**

The objective of this standard is to assure inspection of the bridges at appropriate intervals in order to ensure early detection and reporting of problems which, if left unnoticed, could lead to more costly future repair needs or endanger the public; and to ensure appropriate reporting and documentation of the findings. Routine bridge inspections provide the basis for scheduling repairs and preventative maintenance activities and should be completed at 15 months intervals to cover all weather conditions.

### **401.2 END RESULT SPECIFICATIONS**

#### **401.2.1 General Specifications**

This standard emphasizes inspection, detection, documentation, initiation of remedial actions for deficiencies described in all of the various other bridge maintenance Standards as well as deficiencies in the bridge structure and materials. Actual definitions of the deficiencies and the required actions and expected outcomes associated with those deficiencies are contained in the other Standards. The level of effort required for the inspection shall be not less than would be done for a bridge inspection using the AASHTO Bridge Inspection Manual and the most recent TAC bridge guidelines.

The Operator shall ensure that the bridge is inspected by a responsible, trained person, knowledgeable in the fields of bridge construction, bridge maintenance and bridge inspection. The inspector shall visually observe and document in a permanent inspection record the condition of the bridge and its immediate surroundings, noting particularly any unusual conditions, damage, deficiencies or situations requiring remedial action. The documentation shall also include other pertinent data such as date, time, location and weather conditions. When the inspector encounters a situation, which is hazardous or potentially hazardous, the Operator will immediately take appropriate safety precautions to protect the traveling public and shall notify the GNWT of the situation.

A system or procedure shall be established by the Operator to track condition reported as needing corrective actions, from the time they are first reported until remedial actions have been completed.

#### **401.2.2 Detailed Specifications**

Without limiting the provisions of any of these Maintenance Standards, the following is a list of major bridge or other structure items, which will be inspected by the Operator:

- a) Stream channels for bank scour, bed scour, blockages or flood potential. The Operator will notify GNWT immediately of any condition outside of the right-of-way, which poses a threat to a bridge or other structure, or the Highway.

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- b) Foundations for any movement, settlement, piping or scour.
- c) Bearings for freedom of movement, condition or need of lubrication.
- d) Stringers, floor beams and girders for cracking, excessive deflection or movement.
- e) Wearing surfaces for delamination, cracking, holes, excessive wear or slipperiness.
- f) Deck joints for cleanliness, freedom of movement and seal against water penetration.
- g) Rails, barriers and posts for any damage.
- h) Painted steel structures for any rust, stains or corrosion and for any accumulations of dirt and debris.
- i) Deck surfaces, drains, pipes, bearing areas and bridge seats for accumulated debris or moisture traps.
- j) Deck surface lighting and any structure signing including clearances (vertical and horizontal), delineation, load restriction, warning signs.
- k) Highway approach slabs for dips, roughness or bumps at the abutments.
- l) Excessive camber or sag or excessive live load vibration.
- m) Cracking of concrete surfaces, particularly over piers and abutments or in beams.
- n) Sign bridges for any accident damage, loose or missing bolts, cracked welds, corrosion or base failures.
- o) Without limiting the following and, where applicable, these items will be inspected and maintained by the Operator where they exist on the bridge and other structures in the service area: catwalks, service support systems (pipelines, electrical, etc.) security systems, tolling system, deicing system, pumping systems, backup electrical supply systems and compressors as necessary.

Notwithstanding the inspection of items listed above, which can be added to as required, all parts and components of the bridge and other structures and all adjacent conditions are to be thoroughly inspected, including all river and bank conditions.

Inspection of conditions in order to schedule and perform maintenance works is implicit in each Maintenance Standard. Items listed herein do not include all issues, which must be addressed while inspecting structures.

Any hazardous bridge conditions identified by the Operator which are not covered by the maintenance agreement or these Maintenance Standards will be reported to the

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GNWT immediately.

The Operator, as accepted by the GNWT, will monitor all deficiencies and movement of structures and their components. In this regard, the Ontario Ministry of Transportation Training Program and Bridge Inspection Manuals are reference materials for bridge inspections. The publication entitled "Bridge Inspector's Training Manual, 1990" by the U.S. Department of Transportation, Federal Highway Administration, is also an acceptable document for those involved in structures inspection.

All structures shall be thoroughly inspected every year except where specific deficiencies have been noted which require more frequent inspections to be conducted.

#### **401.3 NON-COMPLIANCE**

##### **401.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End-result Specifications described in 401.2 have not been achieved. Specifically, without limiting the generality of the foregoing examples of such Non-Compliance include the following;

- a) It cannot be shown that bridge inspections were carried out in accordance with this instruction.
- b) Adequate, up to-date records of conditions and deficiencies observed during inspections have not been kept.
- c) Conditions and deficiencies requiring corrective action exist but have not been observed and documented by the inspector.

**BRIDGE STANDARD 402  
MAINTENANCE OF STEEL STRUCTURAL COMPONENTS**

**402.1 OBJECTIVES**

The Operator shall perform steel structure component maintenance and repair as required on bridges to restore the integrity and durability of all steel structure components to prevent unsafe conditions for the traveling public and other Facility users and to extend the useful life of these structures. A defined program to test the steel components will include ultrasonic testing on a 3-5 year cycle.

**402.2 END RESULT SPECIFICATIONS**

**402.2.1 General Specifications**

The Operator shall maintain and repair all steel components that have deteriorated to a condition that constitutes or has the potential to create an unsafe condition for the traveling public and other Facility users. Appropriate measures shall also be taken by the Operator to ensure durability of the components and minimal deterioration.

All replacement components or repair materials shall be of the same type and quality or of a better type and quality as the existing materials.

**402.2.2 Detailed Specifications**

All work performed shall be in accordance with applicable Laws and Regulations, the current version of the CSFMHP and the following;

- a) All maintenance repairs shall be performed using materials of either the same type and quality or of better type and quality as the original structure.
- b) All welded repairs shall be done by certified personnel and shall respect the requirements of strength and fatigue in CSFMHP.
- c) Lost, missing, damaged, corroded or loose bolts shall be replaced with bolts of the same size and grade as the original design and tightened to the required bolt tension within ten (10) days from the time first detected or reported to the Operator.
- d) Any structural steel defects involving cracks or loss of section that is detected by or reported to the Operator shall be assessed by a Bridge Structural Engineer retained by the Operator to determine a recommended course of action.
- e) If the bridge structural engineer determines that there is a risk of structural failure under loading, then the Operator shall respond immediately by restricting the allowable loading on the bridge, or closing the bridge to all users. The Operator shall then commence repairs within twenty-four (24) hours.

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- f) Re-painting of bridge surfaces shall be undertaken when the condition of the painted surfaces reaches priority 3 as defined by the Bridge Guide Paint Condition System - as adopted by the GNWT DOT. The Operator shall not allow the painted surfaces to deteriorate to priority 1 or 2 level.
- g) Repairs which are preventative maintenance in nature shall be undertaken within three (3) months of detection by or reporting to the Operator.

### **402.3 NON-COMPLIANCE**

#### **402.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described in 402.2 have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance include the following:

- a) Corrective actions have not been undertaken within the prescribed time frame.
- b) Repairs or material used are of substandard quality or are not in line with the requirements of this Standard.
- c) Situations which represent a hazard to the traveling public have not been dealt with in a timely or professional manner.

**BRIDGE STANDARD 403  
MAINTENANCE OF CONCRETE STRUCTURAL COMPONENTS**

**403.1 OBJECTIVES**

The Operator shall perform all concrete structure maintenance and repair as required on the bridge to restore the integrity and durability of all concrete structure components to prevent unsafe conditions for the traveling public and other Facility users and to extend the useful life of these structures.

**403.2 END RESULT SPECIFICATIONS**

**403.2.1 General Specifications**

The Operator shall maintain and repair all concrete structures and associated components that have deteriorated to a condition that constitutes or has the potential to create an unsafe condition for the traveling public and other Facility users or impact the structural integrity of the structure. The Operator shall repair deteriorated areas of concrete structures and associated components to increase their durability. All materials used in the repairs shall be of a quality consistent with the original structural design or better and shall ensure durable repairs.

**403.2.2 Detailed Specifications**

All work shall be performed in accordance with current statutory requirements, the requirements of the current version of the CSFMHP and the following;

- a) All maintenance repairs will be performed by the Operator in a manner that is in accordance with or exceeds the original surface quality as determined by the original design specifications.
- b) Concrete maintenance repairs will be performed by the Operator in a manner that ensures they are sound, durable, extremely well bonded to the surrounding surface and well finished.
- c) Concrete repairs shall be performed by the Operator based on the latest ACI Practices for Bridge Repairs. Typical repairs include:
  - i All damaged or contaminated concrete at the repair site shall be removed. The edges of all repairs shall be cut straight and square to a minimum depth of twenty-five (25) mm. Wherever reinforcing steel is exposed, the surrounding concrete shall be removed to a minimum of twenty (20) mm behind the exposed reinforcing steel;
  - ii. All surfaces to be repaired shall be water blasted, high pressure washed, swept or abrasive-blasted to remove loose material and laitance. The cleaned surface shall then be thoroughly dried or saturated and surface

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- dried as recommended by the manufacturer of the specific repair material;
  - iii. If recommended by the manufacturer of the repair materials, a bonding agent shall be used. A neat cement slurry shall be used with concrete products;
  - iv. All concrete mixes shall be appropriate to the job at hand;
  - v. All placing and vibration methods shall yield a sound, uniform, and void-free product well bonded to the existing surface;
  - vi. Cracks shall be repaired by pressure injection of an epoxy material;
  - vii. All materials shall be properly cured;
  - viii. All repaired surfaces shall be finished in the same manner as adjacent concrete surfaces;
  - ix. If, on completion of the work, there is a marked efflorescence in any area, it shall be removed by high-pressure washing.
- d) Reinforcing steel repair shall be performed by the Operator based on the latest Engineering Practices for Bridge Repairs. Typical repairs include:
- i Reinforcing steel for maintenance repairs shall be of the same size, grade and coating as on the existing structure;
  - ii All exposed reinforcing steel shall be thoroughly cleaned of all rust and loose concrete. Any breaks in the coating of epoxy-coated bars shall be repaired with epoxy patching compound;
  - iii Corroded reinforcing steel shall be replaced/spliced with additional steel of the same size, grade and coating to restore it to at least its original strength.
- e) Epoxy injection shall be performed in accordance with manufacturer's recommendations by a qualified technician.
- f) Any structural deterioration to concrete structure that is detected by or reported to the Operator shall be assessed by a Bridge Structural Engineer retained by the Operator to determine a recommended course of action. The Engineer must be registered or licensed to practice in the Northwest Territories.
- g) Concrete structure maintenance, including epoxy injection, shall be completed by the Operator within three (3) months from the time first detected by or reported to the Operator or within a time frame that is appropriate to the urgency and nature of the repair as determined by a Bridge Structural Engineer.
- h) If the Bridge Structural Engineer determines that there is a risk of structural

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failure under loading, then the Operator shall respond immediately by restricting the allowable loading on the bridge, or closing the bridge to all users. The Operator shall then commence repairs of such bridge within twenty-four (24) hours.

- i) Repairs which are preventative in nature shall be undertaken within three (3) months of detection by or reporting to the Operator.

### **403.3 NON-COMPLIANCE**

#### **403.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described in 403.2 have not been achieved. Specifically, without limiting the generality of the foregoing examples of such Non-Conformance shall include the following;

- a) Corrective actions have not been undertaken within the prescribed time frame.
- b) Repairs and materials are of substandard quality or are not in line with the requirements of this Standard.
- c) Situations which represent a hazard to the traveling public have not been dealt with in a timely and professional manner.



## **BRIDGE STANDARD 404 TRAVELED SURFACE OF BRIDGES**

### **404.1 OBJECTIVES**

The traveled surface of a bridge is subject to more adverse conditions than any of its other components. These conditions are normally caused by traffic, weather and chemical action.

It is important that all riding surfaces, curbs and sidewalks (where applicable) be maintained so that water, sand, deicing mixtures and debris are prevented from entering the surface material. Failure to recognize and act upon conditions set out in this Standard will result in deterioration of surface material as well as that of the structure below the surface.

### **404.2 END RESULT SPECIFICATIONS**

#### **404.2.1 General Specifications**

The Operator is responsible for detecting and reporting the existence of surface defects. It is also the Operator's responsibility to make necessary, temporary repairs until such time as permanent repairs can be carried out. The Operator is also responsible for evaluating the reported defects and developing programs for repair. When the Operator encounters conditions considered hazardous, necessary safety precautions are to be taken and the GNWT is to be notified. The deck wearing surface of the bridge as well as the approach slabs are considered a continuation of the roadway and must receive the same level of maintenance.

#### **404.2.2 Detailed Specifications**

The following conditions are those which relate to structures in particular. Minimum required actions of the Operator are also specified. Refer to the AASHTO Manual for Maintenance Inspection of Bridges, the TAC guide for Bridges, and the Alberta Infrastructure Bridge Inspection Manual for additional details.

For portland cement concrete bridge surfaces;

- a) **Scaling** Scaling is a term used to describe the gradual and continuing loss of surface mortar and aggregate. The existence of this condition should be documented but no mandated maintenance is required.

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- b) **Spalling** Spalling is defined as the breaking or chipping of surface material usually resulting in fragments with feathered edges or a circular or oval depression in the concrete which may reveal reinforcing steel. The existence of this defect shall be documented and where large pieces of concrete are loose or missing, or a local spall exists, a cold mix or hot mix patch shall be undertaken until a permanent repair can be scheduled.
- c) **Slippery surfaces** Where the concrete surface appears polished and glossy, there may be a loss of vehicle traction especially in wet weather. The measurement of this condition, the severity of the deficiency and the required maintenance actions and timing shall be as specified in the guides.
- d) **Cracks** Cracks can be parallel to, diagonal to, or at right angles to the centre line of the bridge. Cracks shall be documented including location, depth, orientation, width and where possible their origin and structural significance shall be determined. Repair of cracks shall be in accordance with approved Bridge Standards.
- e) **Joint sealant loss** This defect can be detected by the existence of joint sealant material being squeezed or pulled out of the joint. Loose sealant material shall be removed from the roadway and joints shall be maintained free of sand and debris until repairs are undertaken. Repairs and timing shall be in accordance with approved standards.
- f) **Potholes** Potholes are bowl-shaped holes in the pavement. Where a pothole is larger and deeper than a “pop-out” of coarse aggregate, temporary repairs are to be made with cold or hot mix. Where potholes are fifteen (15) cm or wider consideration shall be given by the Operator to the development of a more permanent repair in accordance with the standard. Where the waterproofing has been breached, repairs must be made to the waterproofing membrane as well.
- g) **Joint failure** This is defined as an excessive breakdown of a slab adjacent to a joint. Loose material shall be removed and the damaged area filled with asphaltic concrete.
- h) **Settlement or bump at approach slab** This is a deviation of the pavement surface from its original construction profile or a sharp local upward displacement of the pavement surface. If the bump is significant, the Operator shall take whatever safety measures are necessary to warn the traveling public. A sharp local upward displacement of more than twenty (20) mm, settlement of the approach slab by more than twenty (20) mm, water ponding within the driving lanes, or a kink in the vertical road profile equivalent to a change in slope of 0.5% shall require signage, warning the traveling public and remedial repairs to remove the deficiency. This level of deficiency is considered sufficient to constitute or potentially create a hazard to the traveling public and repairs removing the deficiency shall be completed within forty-eight (48) hours of the detection of or reporting to the Operator of the deficiency. Where the deficiency does not exceed these limits and does not constitute a hazard to the traveling

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public, repairs shall be completed within three (3) months. If this deficiency occurs in the winter, temporary measures to reduce the impact should be taken with the final repair undertaken when the weather permits.

#### For Asphaltic Concrete Bridge Surfaces;

- i) **Flushing** Flushing is defined as the existence of free asphalt on the pavement surface. This condition shall be documented and maintenance actions taken in accordance with the requirements and timing specified in the standards.
- j) **Raveling/streaking** This is defined as a progressive loss of pavement material from the surface downward. This defect shall be documented and corrective actions taken in accordance with the requirements and timing of the standards.
- k) **Rippling/shoving** These appear as closely spaced alternating valleys and crests, or unevenness of pavement surface caused by traffic action moving the asphaltic overlay. This condition shall be investigated to determine the cause of the defect. Where the surface irregularities are sufficient to be considered a hazard to or potentially create a hazard to the traveling public, corrective repairs shall be undertaken by the Operator and completed within one (1) month of detection of or reporting to the Operator.
- l) **Cracks** Cracks can be parallel to, diagonal to, or at right angles to the bridge centre-line. Where possible it shall be determined whether the cracks are also present in the underlying concrete slabs. Repairs to cracks in the asphalt shall be in accordance with the standards.
- m) **Potholes** Potholes are bowl-shaped holes in the pavement. This defect shall be documented and repaired in accordance with the standards. Where the waterproofing membrane has been breached, repairs must be made to the waterproofing membrane as well.
- n) **Slippery surfaces** Where the pavement surface appears polished and glossy, there may be a loss of vehicle traction, especially in wet weather. The measurement of this condition, the severity of the deficiency and the required maintenance actions and timing shall be as specified in the standards.
- o) **Joint failures** This is defined as an excessive breakdown of a pavement adjacent to a joint. This defect shall be documented. Loose material shall be removed and the damaged area filled with asphaltic concrete.
- p) **Settlement or bump at approach slab** This is a deviation of the pavement surface from its original construction profile; or a sharp local upward displacement of the pavement surface. If the bump is significant, the Operator shall take whatever safety measures are necessary to warn the traveling public. A sharp local upward displacement of more than twenty (20) mm, settlement of the approach slab by more than twenty (20) mm, water ponding within the driving

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lanes, or a change in the vertical road profile equivalent to a slope of 0.5% or greater shall require signage warning the traveling public and remedial repairs to remove the deficiency. This level of deficiency is considered sufficient to constitute or potentially create a hazard to the traveling public and repairs removing the deficiency shall be completed within forty-eight (48) hours of the detection of or reporting to the Operator of the deficiency. Where the deficiency does not exceed these limits and does not constitute a hazard to the traveling public, repairs shall be completed within three (3) months. If this deficiency occurs in the winter, temporary measures to reduce the impact must be taken with the first repair undertaken when the weather permits.

In general, corrective actions for the traveled surface of bridges shall be carried out using the same procedures and methodologies used for the roadway. In some cases special procedures will be necessary to prevent damage to the bridge deck and waterproofing membrane.

Traveled surfaces shall be patrolled regularly. The timing of corrective actions shall also be governed by the defined actions and response times defined for the Facility pavements.

### **404.3 NON-COMPLIANCE**

#### **404.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance include the following:

- a) One or more deficiencies as defined above and requiring corrective actions have been identified and not corrected within the specified time frame.
- b) Proper documentation of the noted deficiencies and corrective actions has not been kept.

**MAINTENANCE STANDARD 405  
EXPANSION JOINT MAINTENANCE**

**405.1 OBJECTIVES**

The Operator will perform expansion joint maintenance as required on the bridge to meet the following objectives:

- a) Ensure a smooth, stable and safe condition for the traveling public.
- b) Seal decks to prevent deicing material, moisture and debris penetration to underlying bridge components, especially abutment seats and bearings.
- c) Extend bridge deck, wearing surface, bearing and substructure life.

**405.2 END RESULT SPECIFICATIONS**

**405.2.1 General Specifications**

The Operator will maintain the bridge joints as required by maintaining, repairing, resealing and replacing:

- a) Expansion joints.
- b) Sealed joints.
- c) Anchor bolts.
- d) Armour.
- e) Anchorages.
- f) Concrete and/or grout. The Operator will maintain, repair or reseal bridge joints that have deteriorated to a condition that constitutes or has the potential to create an unsafe condition for the traveling public and other Highway users or would accelerate the deterioration of elements such as bearings, bearing seats and ballast walls which are protected from water, de-icing chemicals and debris by the joint.

#### **405.2.2 Detailed Specifications**

The following will be maintained by the Operator on decks and associated curbs and sidewalks to allow for the expansion, contraction and rotational movements associated with temperature changes, concrete shrinkage and differential settlement and to provide a water tight seal:

- a) Bridge joints that are miss-aligned, cracked, worn, shriveled, leaking, separated from joint walls or abraded shall be repaired, replaced or sealed.
- b) Joint anchor bolts that are damaged, rusted, loose or missing shall be repaired or replaced.
- c) Concrete at joints that is cracked, broken, worn or deteriorated shall be repaired in accordance with the appropriate standards.
- d) Armour of expansion joints that is bent, gouged, loose, separated or missing from the concrete deck shall be repaired or replaced.
- e) Steel finger joints and sliding plate joints that are loose, cracked, have broken welds or have missing components shall be repaired or replaced with components acceptable to the GNWT.
- f) Bridge joint seals shall be installed in accordance with manufacturers specifications.

Maintenance of the joint between the roadway and the bridge structure or approach slab will be performed by the Operator in accordance with the standards as applicable.

The Operator shall perform maintenance and repair on bridge joints according to the following maximum response times commencing from the time that the problem has first been detected by or reported to the Operator:

- for the temporary repair of a loose or broken joint creating a hazard for traffic - four (4) hours. For the repair of damaged bridge joint components – thirty (30) days.
- for the repair of concrete and armouring – three (3) months.
- for bridge joint seal replacement – three (3) months.

Major restorative work such as the complete replacement of a joint shall be completed within twelve (12) months of the first time that the deficiencies were detected or reported to the Operator except where the response times indicated above apply.

### **405.3 NON-COMPLIANCE**

#### **405.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Conformance include the following:

- a) Corrective actions have not been undertaken within the prescribed time frame.
- b) Deficiencies have gone undetected through either the annual bridge inspection or routine patrols.
- c) Situations which represent a hazard to the traveling public have not been dealt with in a timely and professional manner.

**BRIDGE STANDARD 406  
CABLE STAY SYSTEM**

**(to be issued)**

**406.1 OBJECTIVES**

The Operator will perform cable stay system maintenance as required on the bridge to meet the following objectives:

- Ensure smooth, stable and safe conditions.
- Extend cable stay system life.

**406.2 END RESULT SPECIFICATIONS**

**406.3 NON COMPLIANCE**



**BRIDGE STANDARD 407  
INERTIAL/CRASH ATTENUATION SYSTEM**

**(to be issued)**

**BRIDGE STANDARD 408  
BRIDGE BARRIER AND RAILING MAINTENANCE**

**408.1 OBJECTIVES**

Maintenance of bridge barriers has the following objectives:

- a) Ensure a safe barrier at the edge of the traveled roadway.
- b) Ensure a pleasing and functional appearance.
- c) Extend the useful life of the concrete barriers and railing.

**408.2.1 END RESULT SPECIFICATIONS**

**408.2.1 General Specifications**

The Operator shall maintain, repair and replace bridge barriers, associated railings and all their related sealing components that have deteriorated to a condition that constitutes or has the potential to create an unsafe condition for the traveling public and other Highway users.

**408.2.2 Detailed Specifications**

All work performed by the Operator shall be in accordance with all Codes, Laws and Regulations, and the following:

- a) Galvanized or metallized handrail finishes on bridges are assumed to be non-repairable. Where galvanizing or metallizing has deteriorated to the point where active corrosion is taking place and the structural capacity of the system has been reduced by more than 10%, the railing shall be replaced within one (1) year.
- b) Concrete barrier replacement shall be of the same size, type and quality as the existing materials. All concrete repair products shall be compatible with the intended use, severity of exposure and strength requirements. Maintenance of concrete barriers shall in general be in accordance with the requirements and timing specified in the standards.
- c) The Operator shall ensure that repairs to concrete barriers re-establish the original design capacity. Particular attention shall be paid to the repair of collateral damage to the bridge deck caused by barrier impact.
- d) The Operator should inspect and maintain sealing of the precast barriers to

prevent leakage through the joints below the barriers.

- e) The Operator will immediately respond to any deficiency in the bridge barrier which constitutes or has the potential to create an unsafe condition for the traveling public and other Highway users. This will generally be the result of vehicle impact and shall be addressed as part of the traffic control associated with accident response.
- f) Temporary railing shall be installed where it is necessary to maintain service on the bridge but permanent repairs cannot be made immediately. However, permanent repairs to restore barrier strength shall be completed within ten (10) days. However, during the winter period temporary repairs to protect the public must be made until a final repair can be completed.
- g) Other barrier repairs shall be completed within thirty (30) days unless otherwise required.
- h) General barrier maintenance other than structural repairs shall be done normally following the spring cleaning of the bridge.

#### **408.3 NON-COMPLIANCE**

##### **408.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the outcomes described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance include the following;

- a) Deteriorated galvanized handrail has not been replaced within the time frame.
- b) Barrier repairs have not been completed within the specified time frame.
- c) Temporary barriers have not been installed when required by this standard.
- d) Repairs do not result in a barrier equal to or better than the original design.

**BRIDGE STANDARD 409  
BRIDGE CLEANING AND WASHING**

**409.1 OBJECTIVES**

Bridge cleaning is necessary to remove accumulations of winter sand/deicing mixtures and debris which, if not removed, may cause deterioration of concrete and steel components, impede drainage and create safety hazards and unsafe conditions.

**409.2 END RESULT SPECIFICATIONS**

**409.2.1 General Specifications**

The Operator is responsible for ensuring that the traveled portion of the bridge roadway is clear of sand/deicing material and debris. The Operator is also responsible for ensuring that all other designated areas are cleaned and that maintenance personnel are aware of and conform to all applicable Codes, Laws, Regulations and guidelines.

**409.2.2 Detailed Specifications**

The following tasks constitute the annual performance of this maintenance activity:

- a) The accumulation of winter sand, deicing material and debris is to be removed from the approaches, deck, joints, curb, sidewalks and gutters. When dirt and debris accumulation is excessive (greater than 5 mm in depth) vacuum, scrape and/or sweep the bridge surfaces first and collect loose material for proper disposal away from the ends of the structure. This should then be followed by flushing of the surface.
- b) Catch basins are to be cleared of all debris and sand and deicing material accumulations, so as to ensure that outlets are working effectively.
- c) All drainage systems are to be flushed to ensure that they are free flowing. Any blockage of drains is to be removed.
- d) The roadside surfaces of hand rails, barrier walls, light standards and sign supports attached to the bridge are to be washed to a height of three (3) m. above the deck level.
- e) Sand and deicing materials accumulations, together with any debris, are to be removed from the abutment bearing seats and pier tops under the deck joints. Excess material should be removed with shovels, where possible, and the remaining material removed by means of high pressure water jets or compressed air followed by a thorough flushing with water to remove chemical concentrations.

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- f) Pier columns, abutments and retaining walls adjacent to roadways, which have been subjected to salt or chemical spray from passing traffic, are to be washed and flushed to a height of three (3) m. above the road surface.
- g) Steel members are to be washed and flushed by means of a high pressure waterjet, to a minimum height of three (3) m. above roadway level. In addition, particular attention is to be paid to the cleaning and flushing of any areas where sand, deicing chemicals, or debris seems to accumulate.

Disposal of waste material shall be done in accordance with all relevant Regulations. Traveled portions, including curbs and sidewalks, are to be scheduled for annual sweeping as soon as practical in the spring. Catch basins and drains are to be scheduled for cleaning following the sweeping operation. Washing and flushing are to be performed after catch basin cleaning has been completed. These activities shall be completed annually by the Operator no later than June 30th. Subsequent removal of sand, gravel and debris from the traveled surface shall be scheduled throughout the summer season, as required based on the requirements of the various standards.

### **409.3 NON-COMPLIANCE**

#### **409.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance include the following;

- a) It cannot be shown that spring bridge cleaning and washing were carried out in accordance with this standard and completed prior to June 30.
- b) Accumulations of sand, deicing material and other debris on the traveled surface after the spring clean-up exceed the specified tolerable limits.

**BRIDGE STANDARD 410  
VEGETATION CONTROL AT BRIDGES**

**410.1 OBJECTIVES**

Vegetation control consists of the removal or control of undesirable brush and vegetation. Vegetation is required to be removed in order to provide a clear view of the bridge from the approaching roadway or waterway, to avoid obstruction to the free flow of water and to avoid damage to the structure.

**410.2 END RESULT SPECIFICATIONS**

**410.2.1 General Specifications**

The Operator is responsible for reporting the locations requiring brush and vegetation control measures. The Operator shall subsequently determine which control measures are suitable.

**410.2.2 Detailed Specifications**

The following situations require that vegetation be removed or controlled by the Operator:

- a) Brush and vegetation growth adjacent to or under a bridge which prevents clear view of the bridge from the approaching roadway or navigation channels.
- b) Brush and vegetation growth in drainage channels, which prevent free flow of water draining away from the bridge.
- c) Brush which is in contact with bridge components.
- d) Brush and vegetation which is breaking up, or growing from slope protection installations.
- e) Brush and vegetation, which are being removed, should be "close-cut" and cleared from approach shoulders and areas directly under and adjacent to bridges, a minimum of three (3) m from the bridge.

Any brush or vegetation required to be removed shall be taken by the Operator to an approved disposal location.

Removal of brush is determined by need as defined above. Methods of removal and timing of removal shall be in accordance with all applicable codes and standards.

#### **410.3 NON-COMPLIANCE**

##### **410.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance include the following;

- a) Brush and/or vegetation is allowed to contact bridge components.
- b) Brush and/or vegetation growth in drainage channels is preventing the free flow of water away from the bridge.
- c) Brush and/or vegetation growth is damaging the slope paving.
- d) Brush and/or vegetation growth is obstructing visibility of structure.

**BRIDGE STANDARD 411  
BRIDGE BEARING MAINTENANCE**

**411.1 OBJECTIVES**

The Operator will perform bridge bearing maintenance as required on bridges to meet the following objectives:

- a) To ensure that the bridge superstructure can undergo the necessary movements without developing damaging stresses.
- b) Extend bearing life.
- c) Maintain the structural integrity of the bridge.

**411.2 END RESULT SPECIFICATIONS**

**411.2.1 General Specifications**

The Operator is responsible for the cleaning, lubricating, re-alignment and all repairs of bridge bearings including replacement as part of its contractual obligations.

**411.2.2 Detailed Specifications**

The Operator will perform the following work:

- a) Bearings transmit and distribute the superstructure loads to the substructure, and shall be maintained to allow the superstructure to undergo necessary movements without developing damaging stresses.
- b) The following shall be maintained by cleaning, lubricating, re-aligning, re-grouting, repairing and/or replacing:
  - i. All bearings that are rusty, mis-aligned or are covered with winter abrasives, dirt or debris;
  - ii. All damaged pads including, without limitation, teflon, lead and other pads that are damaged, crushed, cracked, split, bulging or torn;
  - iii. Anchor bolts and pins that are damaged or missing;
  - iv. Concrete pads and bearing areas that are cracked or spalled.
- c) The Operator shall replace entire bridge bearings and associated components



that have deteriorated to the condition where maintenance and repair will not restore the original design function of the particular bridge bearing. The repair shall be based on recommendations by a Bridge Structural Engineer registered or licensed to practice in the Northwest Territories, engaged by the Operator.

- d) Jacking procedures, when required, shall be prepared by a Professional Engineer retained by the Operator. Jacking should not be undertaken without stamped drawings, procedures documented, etc.

In addition to the Routine Bridge Inspections (Standard 401), all bearings shall be examined carefully by the Operator after excessive loading, earthquake, flood or vehicle impact on the bridge. Any resulting movement or damage to bearings shall be assessed by the Operator for corrective action.

If a bridge is determined to be unsafe for the traveling public or other Highway users by a Bridge Structural Engineer, then maintenance repairs shall be initiated by the Operator within two (2) hours of that determination. If re-routing of traffic or lane restrictions are required, traffic control shall be undertaken in conformance with the applicable standard.

Within six months of detection or reporting of a deficiency, the Operator shall carry out the following corresponding maintenance activities;

- lubricate, align and repair/replace bearings;
- repair or replace anchor bolts;
- re-grout concrete bearing pads and bearing area.

The Operator will clean bridge bearings of accumulations of dirt, debris or deleterious material annually and within ten (10) days commencing from the time first detected by or reported to the Operator.

### **411.3 NON-COMPLIANCE**

#### **411.3.1 Definition**

The Operator shall be considered to be in Non-Compliance when an audit reveals that the end result Specifications described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance shall include the following;

- a) Corrective actions have not been undertaken within the prescribed time frame.
- b) Deficiencies have gone undetected through either the annual bridge inspection or routine patrols.
- c) Situations which represent a hazard to the traveling public have not been dealt with in a timely or professional manner.

## **BRIDGE STANDARD 412 OBSTRUCTIONS TO WATER FLOW AT BRIDGES**

### **412.1 OBJECTIVES**

Most rivers and streams pick up logs, trees and other debris from adjacent banks. The size and amount of debris picked up is dependent on the nature of the growth on the river bank, and is always greater during peak flow, when the river has generally spread beyond its normal banks.

Debris carried by the river tends to catch on bridge piers or abutments in or adjacent to the river.

For the Deh Cho Bridge, ice chunks and debris will pose the greatest danger. Once this happens, debris will continue to build up until either water pressure forces it loose, or it severely restricts the flow of the waterway.

Restricted water flow causes flooding, which may damage upstream property or roads, as well as subjecting the bridge to forces it may not have been designed to withstand. Erosion at the abutment fill slopes, as well as the stream bed, could also occur.

The objective of this maintenance standard is to maintain debris-free waterways wherever and whenever possible.

### **412.2 END RESULT SPECIFICATIONS**

#### **412.2.1 General Specifications**

The Operator shall note the existence of debris build-up during the regular road patrol. The Operator shall schedule the removal of debris as soon as practical after detection.

#### **412.2.2 Detailed Specifications**

The Operator will provide detailed inspections of all piers/footings and other related components in a manner that is complete. The use of divers and underwater cameras are suggested in a regular and timely schedule.

Removal of debris is to be scheduled annually, after spring run-off, when water levels have returned to normal depths and shall be completed by June 30.

Subsequent build-up of debris should be removed as soon as practical after detection but not later than one (1) month after detection of or reporting to the Operator and prior to significant ice formation in the waterway.

In extreme conditions, where flooding and erosion are in evidence, or it is perceived that debris is causing distress to the bridge, removal of debris is to be undertaken within for

twenty-four (24) hours.

### **412.3 NON-COMPLIANCE**

#### **412.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications described above have not been achieved. Specifically, without limiting the generality of the foregoing, examples of such Non-Compliance include the following:

- a) Debris has not been removed from the waterway prior to June 30.
- b) Subsequent accumulations of debris have not been removed within the specified time frame.
- c) Where flooding and erosion are in evidence or it is perceived that the debris is causing distress to the bridge and removal has not been undertaken.

**DRAINAGE STANDARD 413  
DRAINAGE SYSTEM MANAGEMENT**

**413.1 OBJECTIVES**

The objective of this standard is to establish an overall inspection and reporting system for the management of drainage facilities, water courses, and storm and snowmelt water management areas within the Facility to ensure:

- a) Early detection of water ponding or flooding of Facility:
  - i. Pavement surfaces;
  - ii. Shoulders;
  - iii. Curbs, gutters;
  - iv. Catch basins; and
  - v. Right-of-way areas on the approaches not designated as storm water management facilities.
- b) Early detection of non-performing or damaged drainage facilities such as:
  - i. Sub drains;
  - ii. Drainage inlets, outlets;
  - iii. Culverts, sewers;
  - iv. Curbs, gutters;
  - v. Catch basins, manholes, and ditch inlets; and
  - vi. Storm water management facilities.

**413.2 END RESULT SPECIFICATIONS**

**413.2.1 General Specifications**

All drainage facilities and watercourses within the Facility, including off-takes, require frequent observations and inspections throughout the four seasons of the year to ensure their ability to carry and direct surface water from their point of origin to point of inlet or outlet. The Operator shall perform such observations and inspections. All inspections carried out shall be recorded with respect to: a) time and date b) deficiencies defined in terms of location, problem, time of observance, (c) action(s) required and/or taken

- a) internal/external contacts made if the drainage condition or conditions are judged or considered to be a hazard to the public or likely to cause damage to the Facility infrastructure. Drainage and watercourse inspections shall be carried out throughout the course of the year in three distinct and separate operations:
- b) Routine Drainage Inspections: as part of daily Facility patrolling.
- c) Detailed Drainage Inspection: once per year before May 01.

- d) Additional Drainage Inspections: carried out on an "as required" basis during or following Facility spills with the potential to affect the Facility's drainage system or watercourses, severe rain storms, snow and ice melt, or upstream/downstream flooding within and adjacent to the Facility.

Drainage and watercourse conditions outside the Facility that the Operator has been made aware of which have the potential to create unsafe operating conditions on the Facility or the approaches to the Facility, cause damage to its infrastructure or cause flooding of the Facility and its right-of-way are to be noted and reported to the GNWT immediately. The Operator under these circumstances will be expected to undertake emergency action in cooperation with all affected parties to prevent unsafe Facility operating conditions and the occurrence of infrastructure damage.

#### **413.2.2 Detailed Specifications**

##### **a) Routine Drainage Inspections**

- i. The Operator, as part of the routine patrolling operation of the Facility, shall undertake routine drainage inspections of all drainage structures and water management facilities within the corridor of the Facility and record and report any and all deficiencies requiring maintenance attention.
- ii. Deficiencies noted shall be recorded identifying their location, time and date, condition observed, urgency for repair, and action taken to address the problem. Reviews shall be focused on but not limited to conditions such as flooding of pavements, shoulders and areas of the Facility; water ponding at culverts, catch basins, manholes, ditch inlets/outlets, curbs, gutters and ditches; inadequate performances of all the water management facilities/systems.
- iii. Conditions considered hazardous to the user, employees or the general public are to be reported immediately to the GNWT with steps taken by the Operator to minimize the safety hazard and enhance protection of the Facility through the initiation of maintenance and repairs and the erection of signs, barriers and lane closures.

##### **b) Detailed Drainage Inspections**

- i. The Operator shall undertake an organized detailed inspection of all Facility drainage ditches, watercourses and facilities a minimum of once annually. The inspection shall be undertaken in the spring of the year to be completed not later than May 01, either during or immediately following the spring run off.

## Schedule 4 – Part II

- ii. During the spring inspection, all Facility drainage structures, ditches, watercourses, inlets, outlets, storm sewers, water management facilities, etc. within the Facility are to be field inspected to ensure their operational efficiency during the coming season(s). All deficiencies are to be noted and recorded with repairs or rehabilitation scheduled within the time periods stipulated by the standards.
- ii. Any deficiencies noted that have the potential to result in flooding or damage to the Facility or adjacent properties are to be scheduled for repair immediately, with repairs to be completed within a minimum of thirty (30) days from their observation.
- iv. Any deficiency observed during the detailed inspection that impacts on the structural adequacy of the Facility (roadbed, bridges, culverts, sewers, etc.) is to be reported immediately.
- vi. Conditions considered hazardous to the user, employees or the general public are to be reported immediately to the GNWT with steps taken by the Operator to minimize the safety hazard and enhance protection of the Facility through the initiation of maintenance and repairs and the erection of signs, barriers and lane closures.

### c) Additional Drainage Inspections

- i. During the course of the year additional inspections of the Facility drainage system shall be undertaken on an "as required" basis during or immediately (within four hours) following heavy rain storms or periods of severe local flooding or unusual melting patterns that have the potential to impact on the Facility. All such inspections are to be carried out when conditions of an unusual nature for the area or time of year (i.e. early spring break up), have occurred unexpectedly, or where the public have been advised through weather advisories of expected storm or flooding conditions throughout the Facility.

Additional drainage inspections will also be required to be undertaken following accidental spilling of hazardous materials within the Facility having a potential environmental impact on the Facility's environment including watercourses etc.

- ii. All additional inspections are to be recorded. Information to be included in the report includes: time and date, problems identified, action taken, individuals and authorities notified.

- iii. Conditions considered hazardous to the user, employees or the general public are to be reported immediately to the GNWT and steps shall be taken by the Operator to minimize the safety hazard and enhance protection of the Facility through the initiation of maintenance and repairs and the erection of signs, barriers and lane closures.

#### **413.3 NON-COMPLIANCE**

##### **413.3.1 Definition**

The Operator shall be in Non-Compliance with this standard when an audit reveals that the specifications described above have not been achieved.

**DRAINAGE STANDARD 414  
MAINTENANCE OF DITCHES AND WATERCOURSES**

**414.1 OBJECTIVES**

The objective of this maintenance standard is:

- a) To maintain within the Facility positive drainage facilities, including ditches, watercourse inlets and outlets in compliance with the original Facility design so as to control and remove surface right-of-way water.
- b) To prevent erosion of Facility shoulders, side slopes, ditches and off-takes due to unconstrained, unchanelled free flowing surface water.
- c) To provide safe, managed and unobstructed drainage for all Facility runoff, natural roadside runoff and drainage water passing under or alongside the Facility.
- d) To provide safe storage space for snow accumulated within the Facility during the winter.

**414.2 END RESULT SPECIFICATIONS**

**414.2.1 General Specifications**

The Operator shall inspect, monitor and rehabilitate all Facility drainage ditches, off-takes and watercourses on a continuous basis to ensure that they continue to provide positive drainage in accordance with the original design of the Facility and/or to current drainage standards and practices.

Deficiencies identified during organized inspections under storm conditions or during the course of undertaking other routine Facility maintenance work shall be noted, recorded, scheduled for repair and repaired within the time periods specified by this Standard.

All deficiencies observed which are considered a hazard to the traveling public, adjacent property owners or which have the potential to damage the infrastructure of the Facility and environment are to be attended to within two (2) hours of observance or notification. The Operator will advise the GNWT and take steps to inform, where considered necessary, the Public, Municipal and Police Authorities, and adjacent Facility property owners.

Materials removed, transported, stored, and disposed of from ditches, off-takes and watercourses shall be done in accordance with the approved DOE Regulations. Temporary traffic control due to lane closures up to and including the closure of the Facility as a result of ditch and watercourse maintenance or repair will be the responsibility of the Operator.



#### **414.2.2 Detailed Specifications**

Under Standard 414, Maintenance of Ditches and Watercourses in the areas approaching the Bridge.

- a) Water shall not be permitted to pond in excess of depths of one (1) cm. over areas greater than one (1) sq. m. on shoulders due to any cause including settlements, depressions, berms, etc. which prevent it from reaching Facility swales, ditches or sewer inlets.
- b) Water within ditches, off-takes or other types of drainage facilities shall be prevented from ponding in excess of depths of five (5) cm. over lengths of two (2) m. or more due to obstructions other than designed Facility check dams within the channel or at ditch inlets and outlets.
- c) Ditch grade lines shall be maintained with positive free flow gradients. Ditches and watercourses shall be free of: localized depressions containing pockets of water greater than five (5) cm. in depth over two (2) m. length; drop-offs greater than ten (10) cm. over a length of one (1) m; obstructions from fallen debris, debris dams, sloughs, etc. over 20% of their ditch cross-section at any one location; deficiencies that increase the normal water flow velocities by more than 10%.
- d) Off-take backslopes, ditch slopes and fill embankments shall be free from water erosion.
- e) Undesirable plant growth including weeds within ditches, off-takes and watercourses shall be controlled within the cross section of the channel and prevented from making up more than 10% of the total vegetative growth within the channel over any thirty (30) sq. m. area of the ditch, off-take or watercourse. All brush lying within the ditch and watercourse channel shall be removed. Any plant growth, grass, brush clippings and debris removed from or around the drainage facilities must not pollute or contaminate the drainage system and the surrounding environment or creating watercourse blockages downstream.
- f) Ditch grade line and backslope erosion as a result of flowing water must not occur and at no time shall signs of erosion be evident over more than 5% of the drainage system along any twenty (20) m. length of the drainage ditch. All eroded areas are to be repaired or rehabilitated to a stable condition in a manner that meets design standards and prevents further or future erosion. Any necessary replanting of dead or dying vegetation within these areas shall not occur during periods or seasons where plant growth cannot be assured in accordance with their planting specifications.

- g) Sediments as a result of embankment or slope erosion must not enter watercourses. If sediment is deposited within ditches in depths greater than six (6) cm. over a length more than four (4) m. it must be removed and disposed of in a manner that does not result in pollution to the natural environment within or external to the Facility.
- h) When new or rehabilitated ditches are constructed or reconstructed within the Facility roadside, they shall be integrated into the existing Facility drainage system, constructed to be free flowing, not alter drainage patterns or result in the diversion of drainage water from one watershed to another, have dimensions consistent with provincial standards used in the original design of the Facility, be erosion free and be constructed in a fashion that is sensitive to environmental requirements/restrictions within the Facility.
- i) Facility shoulders shall not be reduced, damaged or undermined as a result of ditch or watercourse maintenance.
- j) Slopes or embankments damaged as a result of ditch and watercourse maintenance shall be restored to a stable configuration and, if necessary, re-seeded or sodded to prevent soil erosion. Any seeding and/or sodding undertaken by the Operator shall be done in accordance with planting specifications.
- k) Flooding within the Facility or on the Facility pavement structure shall be treated as an emergency by the Operator. The maintenance repairs initiated in the field to contain and remove the flood water and the cause of the flooding must be initiated within two (2) hours of observation or notification.

#### **414.3 NON COMPLIANCE**

##### **414.3.1 Definition**

The Operator shall be in Non-Compliance with this standard when an audit reveals that the specifications described above have not been met.

**GENERAL STANDARD 415  
WINTER MAINTENANCE SCHEDULING**

It is recognized that some OMM Work cannot be completed in the winter period but must wait for the spring or summer season to complete the repair of the infrastructure defect. In such circumstances, the Operator must undertake temporary repairs and post applicable warning signs until a permanent repair can be undertaken.

**ROAD PATROL/TRAFFIC CONTROL STANDARD 416  
HIGHWAY TRAFFIC CONTROL**

**416.1 OBJECTIVES**

The objectives of Highway Traffic Control are to:

- a) Minimize interruptions to the flow of traffic.
- b) Maintain safe conditions for the traveling public, other Facility users and maintenance personnel, while minimizing work stoppages.
- c) Advise affected traffic of the duration and cause of delays.

**416.2 END RESULT SPECIFICATIONS**

**416.2.1 General Specifications**

The Operator shall be responsible for carrying out all traffic control which may be required in response to a specified condition or event on the Facility, required in conjunction with other maintenance activities, or required for traffic management in order to protect the traveling public and other Facility users from situations that constitute or have potential to create unsafe conditions.

**416.2.2 Detailed Specifications**

The Operator shall be responsible for: the supply and use of traffic control devices and materials such as signs, cones, barricades, flashing arrow boards, radios, yellow warning lights and paddles; the performance of traffic control as required to control traffic in order to protect the traveling public, other Facility users and working personnel. The Northwest Territories Work Area Traffic Control Manual (WATCM) will be the primary reference source but other appropriate sign or traffic-related manuals which requires Operators to observe in the traffic control of highways may be applicable.

The Operator's Operations Centre and supervisory staff shall be responsible for documenting in diaries the circumstances, measures applied and results of all significant traffic control actions taken by the Operator.

Detailed end result specifications follow for some of the most common traffic control situations:

- a) Traffic Control Necessary for Facility Hazards
  - i. Natural Hazards the Operator shall perform pre-emptive closures upon detection by or notification to the Operator of a potential hazard (flooding, etc.) immediately upon notification;

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the Operator will perform traffic control for hazards that affect the safety of the traveling public and other Facility users in accordance with the WATCM. Examples of these hazards are road failure, debris on the Facility, washouts and potholes. Traffic control shall be in place for these hazards within one hour (1) of detection or notification.

- ii. **Incomplete Work:** the Operator shall perform traffic control for hazards created by incomplete maintenance due to the operations of the Operator in accordance with the WATCM. Examples of these hazards are uneven pavement, oil on the pavement surface, insufficiently cured or hardened concrete, shoulder repairs, etc. Traffic control shall be in place prior to leaving the work site.
- b) ***Traffic Control for Working Personnel and Equipment***  
The Operator shall perform traffic control in accordance with WATCM and DOT Traffic Control Person Instructor's Manual.
- c) ***Complete Closure***  
The Operator shall assist the GNWT and proper Policing Agency in the performance of traffic control for complete and/or partial closures of the Facility or traffic/shoulder lanes in accordance with the guidelines. The Operator shall provide assistance within one hour of notification.
- d) ***Traffic Delays Exceeding 10 Minutes***  
Where traffic flow is restricted due to the operation of the Operator such that the delay in normal travel through the work area exceeds ten (10) minutes or results in backups more than one (1) km, the Operator shall adjust the operations or terminate work until traffic volume eases or be prepared to be assessed a "lane rental" (see OMM Agreement).

### **416.3 NON-COMPLIANCE**

#### **416.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications detailed above have not been achieved. Without limiting the generality of the foregoing, specific indications of Non-Compliance for Traffic Control include:

- a) The Operator has failed to provide adequate traffic control devices.
- b) Traffic delays of over ten minutes or build ups of single lane queues of greater than one (1) km have been detected, reported or observed.

## **WINTER STANDARD 417 WINTER CONTROL**

### **417.1 OBJECTIVES**

The specific objectives of this Maintenance Standard are:

- a) To ensure that a winter operations plan is in place which will allow the Operator to respond to all weather conditions occurring within the area of the Facility.
- b) To provide twenty-four (24) hour management and operational coverage during the winter season to effectively manage the Facility winter maintenance program.
- c) To provide continuous monitoring of weather and Facility conditions.
- d) To provide co-ordination of all communications concerning winter maintenance operations occurring within the Facility with the GNWT.

### **417.2 END RESULT SPECIFICATIONS**

#### **417.2.1 General Specifications**

The Operator shall have in place an annual Winter Operations Management Plan, by September 1, that will provide twenty-four (24) hours per day coverage for the defined winter period or season.

The Operator shall provide an Operations Centre. This Centre will be a key component of the Plan and shall be staffed with experienced, competent and responsible representatives that will assist in the co-ordination of the winter maintenance program. The Operations Centre will be the hub of the winter maintenance delivery program with its main role to direct, co-ordinate, report and communicate the Operator's efforts in winter maintenance.

#### **417.2.2 Detailed Specifications**

The end result specification for Winter Control is predicated on achieving the winter operation guidelines as set out in the codes and standards. The specific requirements for Winter Control include the following:

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- a) Operator shall operate the Operations Centre twenty-four (24) hours a day with responsible staff that can direct, co-ordinate, report and communicate the winter maintenance program.
- b) The Operations Centre is to be in the winter mode from September 1 to May 15.
- c) The Operator will observe and record weather and pavement condition data including weather advisories from Road Patrol, Environment Canada and private forecasters.
- d) The Operator shall carry out all necessary patrols within the Facility in accordance with the applicable standards.
- e) The Operator will subscribe to and make use of the same weather service tracking system presently being used by the DOT.
- f) The Operator will use the standard documents and procedures for weather observations as used by the DOT.
- g) The Operator will provide daily reports on Facility conditions to the public, regulatory agencies, police authorities, and the GNWT DOT by 6:00 a.m., 10:00 a.m. and 2:00 p.m. and as conditions change or at other times as specified by the GNWT.
- h) The Operator will report immediately to the GNWT regarding any adverse or extreme road surface conditions and changes in weather conditions affecting visibility and/or driving conditions.
- i) The Operator will ensure that local communities and the traveling public are informed as to how the Operator can be contacted by the public seeking information on Facility conditions or when reporting maintenance concerns.
- j) A toll-free telephone service will be made available to handle public concerns and questions.
- k) The Operator, through the Operations Centre, will co-ordinate and direct the response to weather and pavement condition information to ensure a quick, pre-emptive and reasonable response to prevailing or pending conditions.
- l) The Operator will maintain a call in message centre, for use by the general public in obtaining information on the latest road condition information.

## **417.3 NON-COMPLIANCE**

### **417.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications detailed above have not been achieved. Without limiting the generality of the foregoing, specific indications of Non-Compliance for Winter Control include the following:

- a) The Operator has failed to develop a Winter Operations Management Plan for the winter operations by the required date.
- b) The Operator, has failed to operate the Operations Centre with competent and experienced staff on a twenty-four (24) hour per day basis during the winter period for September 1 to May 15.
- c) The Operator has failed to complete all necessary daily documentation.
- d) The Operator has failed to communicate weather and road conditions to the public and other identified agencies.



**WINTER STANDARD 418  
SNOW PLOWING**

**418.1 OBJECTIVES**

The specific objectives for Snow Plowing are:

- a) Clear snow and remove ice build-up from the traveled lanes and shoulders of the Facility.
- b) Ensure the Facility is kept clear, open, and in a condition that is safe for the traveling public and other Facility users.

**418.2 END RESULT SPECIFICATIONS**

**418.2.1 General Specifications**

The Operator will plan and execute an effective snow and ice removal program such that Facility surfaces are cleared of snow and ice in a timely and systematic manner and in accordance with the specifications and scheduling outlined in these specifications.

**418.2.2 Detailed Specifications**

The detailed specifications relevant to Snow Plowing are as follows:

***Planning***

- a) The Operator will be responsible for preparing and submitting a Snow Plowing Operational Plan that meets at a minimum, the requirements of the DOT Operating Instructions by September 01.
- b) The Snow Plowing Operational Plan must provide for the deployment of snow plows capable of meeting the following objectives:
  - i. The Facility must be open to the driving public at all times, unless the road is closed by the Operator, the GNWT or authorized authority.
  - ii. All lanes remain operational during snow conditions.
  - iii. Plowing shall commence prior to snow accumulations reaching twenty (20) mm on any Facility lane including approach ramps.

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- iv. Remove all snow from the surface of the Facility following the end of a winter storm within six (6) hours.
- v. The deployment of snow plows shall be calculated in accordance with the DOT Maintenance Operating Instruction
- vi. If required to meet labour and plowing standards and/or where storm intensities are beyond the capabilities of the normal snow complement during storms which last more than forty-eight hours. The Snow Plowing Operational Plan must include a procedure for obtaining and deploying additional resources during storms which last more than forty-eight (48) hours.
- vii. The minimum number of snow plow units operational during anyone storm shall not be less than ninety-five (95%) of the required complement;
- viii. All snow plows and operators shall respond to a call out within one hour of being informed by the Operator's Operations Centre. These call outs shall be documented on the proposed DD&MS database;
- ix. The Snow Plowing Operational Plan must include a contingency plan to address storm conditions which may force the closure of the Facility or instances where traffic prevents the deployment of the standard snow plow complement;
- x. Plowing coverage shall provide for the continuous integrated plowing of both shoulder and surface of the Facility including interchange ramps.

### ***Operation***

- a) The required complement of snow plows is to be deployed on the Facility within one hour of call out by the Operations Centre;
- b) Emergency vehicles and equipment shall be deployed on the Facility in accordance with the Snow Plowing Operational Plan in the event that the standard snow plow complement cannot meet the specified standards;
- c) Snow plows shall be operated in accordance with the operational specifications established in the DOT Maintenance Management System Manual.
- d) Plow trucks shall operate as an integrated unit to remove snow from the shoulders and surface in a continuous manner according to the Snow Plowing Operational Plan;
- e) Snow plowing operations shall be performed with due diligence to prevent damage to the Facility surface and shoulders;

- f) Snow plowing on all shoulders and surface shall be completed within six (6) hours of the last measurable snowfall;
- g) The Facility Snow Plowing on the facility shall be done in such a manner that snow is not allowed to accumulate on the shoulders.

***Equipment***

- a) Specifications for plow trucks will, at a minimum, be in accordance with, the **Motor Vehicle Act** and any other relevant DOT Standards.  
***Damage To Facility Furnishings and Private Property***
- b) The Operator shall be responsible for any infrastructure damage to the Facility or private property including, but not limited to, signs, fences, median and roadside barrier, curbs, bridge abutments and railings, and lamp standards.
- c) The Operator shall be responsible for repairing all damage to the Facility or private property caused by the plowing operations within five (5) working days following a storm.

### **418.3 NON-COMPLIANCE**

#### **418.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the End Result Specifications detailed above have not been achieved. Without limiting the generality of the foregoing, specific indications of Non-Compliance for Winter Control include:

- a) The Operator has failed to develop and put in place a Snow Plowing Operational Plan that meets the Detailed Specifications requirement in section 419.2.2 prior to September 01.
- b) The Operator has failed to deploy snowplows in accordant with the Snow Plowing Operational Plan resulting in failure to meet performance specifications.
- c) The Operator has failed to deploy additional resources in accordance with the Snow Plowing Operational Plan and interruptions to users of the Facility resulted.
- d) The Operator has failed to keep snow from accumulating on the shoulders.
- f) The Operator has failed to provide snowplows that meet minimum requirements of the DOT.
- g) The Operator fails to remove snow from the surface and shoulders within the specified time frame at end of a storm.
- h) The Operator has failed to repair damage to private property and infrastructure components from snow plow operations.

## **WINTER STANDARD 419 DEICING OPERATIONS**

### **419.1 OBJECTIVES**

The specific objectives for Sand and Salt Spreading are:

- a) Clear snow and remove ice build-up from the traveled lanes and shoulders
- b) Ensure Facility and access to the Facility is kept clear, open, and in a condition that is safe for the traveling public and other Facility users.

### **419.2 END RESULT SPECIFICATIONS**

#### **419.2.1 General Specifications**

The Operator will plan and execute an effective snow and ice removal program such that Facility surfaces are cleared of snow and ice in a timely and systematic manner and in accordance with the specifications and scheduling outlined in these standards.

#### **419.2.2 Detailed Specifications**

The detailed specifications relevant to Deicing Operation are as follows:

##### ***Planning***

- a) The Operator will be responsible for annually preparing a Sanding/Salting Operational Plan by September 1 that meets the requirements of the NWT DOT's Operating Instructions.
- b) The Sanding/Salting Operational Plan must address the following specific guidelines:
  - i. The Facility must be open to the driving public at all times, unless the road is closed by the Operator, or the GNWT;
  - ii. All lanes remain operational;
  - iii. The Plan must make provision for bringing in additional resources during condition that cause icing;
  - iv. A method for recording the material usage shall be developed;
  - v. The storage and re-stocking of deicing materials during the winter period and summer period must be addressed

***Communications***

- a) All applicable agencies shall be notified of the deployment of deicing operations on the Facility.
- b) Weather and pavement condition reports shall be issued in accordance with Winter Operations Management Plan, as described in this standard.

***Operations***

- a) The Operator will be responsible for the selection of the appropriate material for the existing conditions in a given storm.
- b) The Operator will complete deicing operation in order to achieve a bare surface on the Facility within twenty-four (24) hours of the last measurable snowfall/ice build up.
- c) Any deicing chemicals spilled outside the storage facility shall be cleaned up as soon as possible.

***Equipment***

- a) All deicing equipment must conform to the general specifications detailed in General Standard 020 - Vehicles and Equipment and DOT Standards.

***Damage To Facilities***

- a) The Operator shall take reasonable care to minimize damage to the Facility or private property including, but not limited to, signs, fences, median and roadside barrier, curbs, bridge abutments and railings, and lamp standards.
- b) The Operator shall be responsible for repairing all damage to the Facility or private property caused by the sanding/salting operations within five (5) working days following the end of a storm.

Any changes to environmental procedures may require the Operator to modify its operation to reflect the current environmental requirement.

### **419.3 NON-COMPLIANCE**

#### **419.3.1 Definition**

The Operator shall be in Non-Compliance when an audit reveals that the end result specifications detailed above have not been achieved. Without limiting the generality of the foregoing, specific indications of Non-Compliance for Deicing Operation include the following:

- a) The Operator has failed to develop a Deicing Operational Plan prior to September 01.
- b) The Operator has failed to deploy the proper assets or equipment in accordance with the Operational Plan and interruptions to users of the Facility resulted.
- c) The Operator has failed to deploy additional resources in accordance with the Operational Plan in a timely manner.
- d) The Operator has failed to apply the deicing materials properly.
- e) The Operator fails to achieve bare pavement within specified time frame at end of storm.
- f) The Operator has failed to provide the proper equipment that meet DOT Standards.
- g) The Operator has not taken reasonable care to minimize the damage to infrastructure components.
- h) The Operator runs out of deicing material.
- i) The Operator fails to store the deicing materials/chemicals in a proper method.

**BRIDGE STANDARD 420  
PAVEMENT MARKINGS**

**420.1 OBJECTIVES**

Specific objectives of Pavement Markings is to facilitate the safe and orderly movement of traffic.

**420.2 END RESULT SPECIFICATIONS**

Place line markings as required to delineate traffic lanes between the centerline, lane lines and turning lanes locations where the absence of or deficiencies in pavement markings are unsafe or have the potential to become unsafe for Highway users.

All Pavement markings are well defined, clear, distinct and in accordance with the Manual of Standard Traffic Signs and Pavement markings. Ensure that lane markings bond last for until the permanent markings are applied.

Remove all pavement markings, which are superfluous or obsolete as directed by the Territory.

Remove paint or other pavement markings materials and dispose it of in a manner acceptable to regulatory agencies.



**BRIDGE STANDARD 421**

**ILLUMINATION**

**421.1 OBJECTIVES**

**421.2 END RESULT SPECIFICATIONS**

**BRIDGE STANDARD 422**  
**SIGNS (ref: GNWT Highway Maintenance Standard)**

**Temporary signs**

**422.1 OBJECTIVES**

Objective is to maintain signs at Facility in a good condition at all times.

**422.2 END RESULT SPECIFICATIONS**

Sign control, warn and expedite traffic and provide information as to highway routes, directions, destinations and points of interest. A complete system of signing is necessary to convey to the motorist conditions that will be encountered and regulations that must be observed while driving on our highways.

Poorly maintained signs lose their authority as traffic control devices. Damaged, defaced or dirty signs are ineffective and are a discredit to the Department.

Signs maintenance includes straightening, repair, cleaning and the replacement of permanent highway signs, temporary signs, delineators and posts to correct deficiencies such as:

- Damage to signs, delineators and posts
- Sign illegibility
- Paint deterioration
- Obstructed visibility
- Act of vandalism
- Replacement of obsolete signs
- Poor reflectivity

**BRIDGE STANDARD 423**  
**SWEEPING OF ROADWAY (ref: GNWT Highway Maintenance Standard)**

**423.1 OBJECTIVES**

Objective is to maintain and clean asphalt surface of the approach roads, which are part of this agreement.

**423.2 END RESULT SPECIFICATIONS**

Sweeping of asphalt surfaces is to provide:

- A safe clean dust free asphaltic surface
- Prevent markings from becoming obscured

During the spring, it is necessary to clean the winter accumulation of sand and gravel from road surfaces and shoulders, particularly at restricted speed zones. Depending on the length of the breakup period it may be necessary to repeat this activity several times.

**BRIDGE STANDARD 424  
MAINTENANCE REPORTS**

**424.1 OBJECTIVES**

**424.2 END RESULT SPECIFICATIONS**

**BRIDGE STANDARD 425  
FACILITY MANAGER'S ORGANIZATION  
AND CERTIFICATE**

**425.1 OBJECTIVES**

**425.2 END RESULT SPECIFICATIONS**

**BRIDGE STANDARD 426  
MATERIAL SUBCONTRACTORS AND  
MATERIAL SUBCONTRACTOR FUNCTION**

**426.1 OBJECTIVES**

**426.2 END RESULT SPECIFICATIONS**

## **GENERAL STANDARD 427 MATERIALS**

### **427.1 END RESULT SPECIFICATIONS**

#### **New/Salvage Materials**

All materials used in the maintenance or repair of any Facility infrastructure component shall be in compliance with the Construction Specification for the Project and any other DOT maintenance material standards. Materials without standards or alternative materials that do not meet the standards must receive the GNWT's Approval prior to use.

It is the Operator's responsibility to ensure that any materials used in the maintenance of the Facility meet or exceed the applicable standards. The Operator is also responsible for conducting and documenting all relevant tests and specifications for each material supplied and used on the Facility.

#### **Waste Material**

The management and disposal of excess material is the sole responsibility of the Operator. The Operator is responsible, when disposing of environmentally sensitive materials, for complying with current Northwest Territories Environmental Policies and any other Environmental Laws.

Stockpiling of excess material within the Facility is not permitted unless authorized by the GNWT.

#### **Transportation of Material**

Transportation and handling of materials used in conjunction with the maintenance and operation of the Facility must adhere to all relevant legislation.

**GENERAL STANDARD 428  
VEHICLES AND EQUIPMENT**

**428.1 OBJECTIVES**

It is the Operator's responsibility to ensure that all vehicles and equipment used in the maintenance or repair of any Facility infrastructure shall be in compliance with all appropriate codes, standards and laws.

**428.2 END RESULT SPECIFICATIONS**

The following specific standards must be followed:

- a) All vehicles and specific equipment falling under the provisions of the *Motor Vehicle Act* must be in compliance with all the requirements of the Act.
- b) All vehicles must be equipped with an operable two-way wireless communicator device to allow communication between the Operator's Operation Centre and operators.
- c) Vehicles and mobile equipment operating within the Facility must have operating and warning lights which meet current GNWT DOT Standard.

Additional standards relevant to equipment used on snow and ice control are documented in the applicable winter standards.



**BRIDGE STANDARD 429  
INCIDENT CONTROL/RESPONSE**

**429.1 OBJECTIVES**

**429.2 END RESULT SPECIFICATIONS**

**SCHEDULE 5**  
**FUNDAMENTAL MATTERS**

Fundamental Matters include each of the following matters unless GNWT notifies the Project Company and the Contracting Party otherwise in writing.

1. Approval of a change request.
2. Issuance of a change order.
3. Verification of an event of Force Majeure.
4. Approval of each surety.
5. Approval of form and substance of surety bond.
6. Approval of material subcontractors.
7. Approval in any OMM Agreement of the renewal of the initial term.
8. Approval of any changes to the Final Plans and Specifications.
9. Approval of insurers and approval as to terms, form, amounts, deductibles, loss payees, named and additional insured and/or insurer and approval of amendments thereto.
10. Issuance of a notice of Default or declaring an Event of Default.
11. Approval of any material change in the shareholders of the Contracting Party, any reorganization of the Contracting Party or any consolidation, merger or amalgamation of the Contracting Party.
12. Exercise of remedies or rights upon the occurrence of a Project Agreement Default or Event of Default.
13. Approval of the termination of any reinvestment interest rate swap arrangement or similar arrangement entered into by the Project Company.
14. Entering into, adding to, amending, supplementing, replacing or terminating any documentation relating to the Debt (including swap arrangements) and/or the Ineligible Cost Facility.
15. Entering into, adding to, amending, supplementing, replacing or terminating any of the documentation relating to the Invested Equity, including waiving any rights, benefits or entitlements in connection therewith.
16. Appointing, terminating, removing, or replacing the Independent Engineer.
17. Dispute resolution with respect to any of the foregoing.

**Schedule 6  
Deh Cho Bridge Concession Agreement**

**GNWT COMPLETED FACILITIES**

- 1.0 GNWT Completed Facilities are comprised of those facilities, works and improvements located within, or made to portions of, the Facilities Lands in the state and condition and level of completion that exists as at the date of execution of the Deh Cho Bridge Project Concession Agreement.
- 2.0 The following table is a list of the Completed Facilities as at the execution of the Concession Agreement:

Serial	Description	Remarks
1	Ferry landing and Approach sites North and South	
2	Ferry waiting Areas North and South	
3	Ferry Haul Out Areas – South Side	
4	NWT Highway 3 between stations 23+150 and 25+820 – and all related works, signs, equipment related to the highway system	

**SCHEDULE 7**  
**MINISTRY SAFETY STANDARDS**  
**DEH CHO BRIDGE PROJECT**

**1.0 INTRODUCTION**

The Project Company shall place a high priority on the safety of the traveling public and Project Company's staff in conducting the every day work, including the construction, operation, management, maintenance and rehabilitation of the Project and Toll System. The time frames specified in the Operation and Maintenance Standards for undertaking specific activities are maximum time allotments allowed for conditions that do not normally pose a threat to the general public or Project Company's staff. Should a condition exist or arise on the Facility or with respect to the Toll System which poses a threat to the safety of the general public or the Project Company's staff the condition (and threat created thereby) must be rectified and dealt with as soon as reasonably possible notwithstanding any longer time frames specified in the Operation and Maintenance Standards otherwise applicable thereto.

**2.0 OCCUPATIONAL HEALTH & SAFETY ACT:**

**2.1 INTRODUCTION**

Safety is the utmost importance to the Government of the Northwest Territories (GNWT). It will be the Project Company's responsibility to design, construct, operate, and maintain the Project such that it is safe for the motoring public, the general public, and for all personnel employed directly or indirectly by the Project Company for the Project.

Project Company is to provide a detail Safety Plan. The Safety Plan is to outline details with respect to the Project Company's policies, safety plans, training programs and work site control plans to ensure the health and safety of all workers during the Construction and Operating period.

**2.1.2 OCCUPATIONAL HEALTH AND SAFETY ACT**

The Project Company, its employees, agents and subcontractors shall at all times comply with the provisions of the *Occupational Health and Safety Act* and its subordinate regulations. The Project Company shall assume all of the responsibilities and duties of the prime contractor.

In the event that the work sites of two or more contractors coincide, it shall be the responsibility of the Project Company to liaise with all other contractors and jointly develop a health and safety system or process for the affected work site.

The Project Company shall, to the extent required of a prime contractor establish and maintain a health and safety system or process to ensure compliance with the *Occupational Health and Safety Act* and its subordinate regulations by its subcontractors.

### **2.1.3 SUBCONTRACTORS**

The Project Company shall acting as a prime contractor ensure that any subcontractors engaged in the completion of the Project or the performance of the O&M are able to comply with all health and safety requirements before commencing work.

### **2.1.4 WORKSITE HAZARDS**

The Project Company shall identify worksite hazards and shall develop operational occupational safety policies, procedures and plans that are specific to those hazardous aspects of the Project or the O&M to ensure the safety of every person at a construction or maintenance site and the public traveling through the site. When requested by the GNWT, the Project Company shall provide copies of these safety policies, procedures and plans prior to the commencement of the work.

The GNWT may order the suspension of work in cases of recognized imminent danger or when the Project Company fails to comply with Occupational Health and Safety Act or fails to rectify previously identified worksite hazards.

### **2.1.5 ACCIDENT INVESTIGATIONS**

In the event of an injury or accident involving employees of the Project Company or its subcontractors during the Construction Period or the Operating Period, the Project Company shall conduct an accident investigation.

The Project Company shall supply a copy of this investigation report to the GNWT within 72 hours of the injury or accident. In the event of a death involving employees of the Contractor or its subcontractors during the Construction Period or the Operating Periods, the Project Company shall inform the GNWT within two hours of such a death.

### **2.1.6 THIRD PARTY ACCIDENT REPORTING**

The Project Company shall immediately notify the GNWT of any:

- a) accident occurring within the New Infrastructure involving its own or its subcontractors' vehicles or equipment;
- b) accident occurring during the Construction Period which involves a fatality, serious personal injury, or third party property damage in excess of \$1,000

or as specified in the *Traffic Safety Act*, or successor act or regulation;

- c) Any known accident occurring during the Operating Period that involves a fatality, serious personal injury, or third party property damage in excess of \$1,000 or as specified in the *Traffic Safety Act*, or successor act or regulation.

The Project Company shall investigate the accident (including those of its subcontractors) and complete a detailed accident report in a form satisfactory to the GNWT within 72 hours of when the Project Company first learned of the accident or ought to have learned of the accident.

Such a detailed accident report must include, but may not be limited to:

- photographs
- details of site conditions
- weather reports
- records of signs, and
- witness contact information

In the event of an accident involving a death, the Project Company shall inform the GNWT within two hours the time the Project Company first learned of the death or ought to have learned of the death, but in any event no later than 72 hours after the occurrence of the accident.

#### **2.1.7 SAFETY MEETINGS**

For the duration of the Construction Period and the Operating Period, the Project Company shall conduct safety meetings prior to the commencement of any work on each major work phase of the Project and the O&M, or monthly, whichever occurs more frequently. The GNWT shall be invited by the Project Company to send a representative to attend such safety meetings.

#### **2.1.8 SAFETY TRAINING**

All work done by the Project Company needs to be performed following the Occupational Health & Safety Act and regulations, as well as applicable GNWT guidelines, policies, and standards. The Project Company becomes the Prime Contractor for all respective work activities and work sites.

In general, safety at the job site is the Project Company's responsibility. If a work site has two or more Contractors, it is the responsibility of the Project Company's personnel to ensure that the work is conducted in such a manner to create a safe environment for themselves, other employees, and the traveling public.

The Project Company is expected to have mandatory safety training for his personnel,

which will vary according to employees' roles. Some examples of applicable safety courses are:

- flagperson training
- WHMIS
- first aid and CPR
- TDG (Transportation of Dangerous Goods)

The following examples of safety courses are not mandatory, but enrolment depends upon the duties of the Project Company's personnel:

- snowplow awareness (should be mandatory for new snowplow operators)
- defensive driving and operator training modules, such as those which were used by GNWT for its operator training program
- cutting torch training

### **2.1.9 DUE DILIGENCE**

Due diligence means taking reasonable measures to protect from harm all those who could be expected to be affected by Work being performed. It is a standard by which employers can judge the content and effectiveness of their health and safety programs.

Due diligence can be used as a defense under the law, but it can only be used when appropriate health and safety policies, practices, and procedures are created, implemented, and enforced in the workplace.

From GNWT's position, there are two elements to due diligence:

- GNWT has the ultimate responsibility for the maintenance of the highway and the safety of the traveling public. DOT must not jeopardize the safety of the public.
- GNWT and the Project Company must act with due diligence when inspecting the condition of the highway and the status of the Project Company's worksite to ensure the work is being performed in accordance with the appropriate specifications, policies, and procedures.

Employers (and government departments) need to be able to prove that they did all that was reasonably possible to ensure that the workers (or public) are protected as they carry out their tasks. This is done through:

- developing policies, practices, and procedures (developed by the employer of whomever does the work) for duties that need to be performed
- developing training programs and training employees to perform their jobs effectively
- monitoring and measuring effectiveness of policies and procedures
- communicating information on potential hazards
- auditing work

- developing accident investigation and reporting procedures
- documenting these safety measures

## **2.2 ACCIDENTS**

The Project Company is responsible for all claims related to any accident that occurs within the Project. This includes accidents involving the public during both the Construction Period and the Operating Period.

## **2.3 HEALTH AND SAFETY SUMMARY REPORTS**

### **2.3.1 Monthly Health and Safety Summary Reports**

During the progress of the Project and the O&M until the end of the Term, the Project Company shall complete *Monthly Health and Safety Summary reports*, and submit these reports to the GNWT at the end of each month.

### **2.3.2 Project Completion Health and Safety Summary Reports**

For each fiscal year ending March 31 during and until the end of the Term, the Project Company shall complete the Project Completion Health and Safety Report.

### **2.3.3 Year End Health and Safety Summary Report**

For each year during the Term, the Project Company shall complete the *Year End Health and Safety Summary Report* by January 31 of the following year.

## **3.0 ENVIRONMENTAL REQUIREMENTS**

It will be the Project Company's responsibility to ensure compliance to all environmental requirements. As well, the Project Agreement requires the Project Company to meet specific environmental mitigation and indemnifies the GNWT from any related environmental liability.

The Project Company will be required to implement an Environmental Management System (EMS) during the entire term of the Project Agreement, in accordance with the Technical Requirements. Proposals are to include details relating to an EMS in accordance with the Submission Requirements.

The Project Company needs to be aware of and follow all current environmental legislation and Federal, Territorial, and local by-laws and other legislation that could affect the construction and maintenance operations, especially new Department of



Fisheries and Oceans regulations for working near waterbodies.

The Project Company is responsible for cleaning up any inert solid waste that came from asphalt, concrete pavement, concrete, or soil cement, or any other waste created as the work occurred. Any work by-product that could be deemed as possible pollution must be cleaned up.

The Project Company should spot-check the Contractor's vehicles that are carrying dangerous goods for appropriate paperwork and placards.

The Project Company should have Transportation of Dangerous Goods training and access to the ***North American Emergency Response Guidebook***, which gives information on the product such as:

- potential hazards
- product codes, so that the Maintenance Contractor can match the number on the TDG placard with the name of the product
- public safety
- emergency response

### **3.1 SALT STORAGE AT GOVERNMENT OWNED SITES**

The impact of salt on the environment is a growing concern. GNWT is determinate that salt is used effectively and contamination is prevented, reduced, or eliminated. The Project Company should follow all applicable acts and regulation in this regard on the Project.

#### **3.1 Federal Policy and Regulations**

##### **3.2.1 *Fisheries Act***

The Department of Fisheries and Oceans (DFO) manages Canada's fisheries resources to ensure the conservation of fish and fish habitat. Through the federal *Fisheries Act*, DFO works to ensure that steps are taken to **protect** fish habitat in land and water use activities and projects. Proclaimed in 1868, the *Fisheries Act* is one of Canada's oldest laws, and demonstrates the importance that has always been placed on fisheries and fish habitat.

The *Fisheries Act* defines **fish** and **fish habitat** as follows:

**Fish:** *"all fish, shellfish, crustaceans and marine animals, and the eggs, spawn, spat and juvenile stages of fish, shellfish, crustaceans and marine animals"*

**Fish Habitat:** *"spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out"*

*their life processes."*

There are three subsections of the *Act* that are particularly applicable to construction and/or maintenance activities conducted in or about a watercourse.

1. Subsection 34(1) of the *Act*, addresses impacts to fish habitat caused by addition of a **deleterious substance** to water: The *Act* defines a **deleterious substance** as:

*"any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water."*

Obvious deleterious substances which can impact fish and fish habitat include gasoline, diesel, oil and other fuels or lubricants associated with heavy equipment and machinery that are spilled in or near water. However, other substances, like sediment released to the water from road maintenance or construction activities, may also have harmful effects and so be considered deleterious.

2. Subsection 35(1), the *Act* addresses **direct and indirect effects on fish habitat** by stating:

*"No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat."*

As outlined in subsection 35(1), if any work is carried out which has the potential or "is likely" to result in the **harmful alteration, disruption, or destruction (HADD)** of fish habitat, development plans must be provided to DFO for approval or authorization. These plans or descriptions of work must include the appropriate information from which the Minister can determine whether proper mitigation measures have been incorporated into the project design to ensure the protection of fish and fish habitat. If the work to be carried out cannot avoid a HADD even with mitigation and if the HADD is determined to be acceptable, an authorization may be issued. Compensation for lost habitat may be included as a requirement of the authorization.

3. Subsection 40(1) details enforcement actions of the DFO when subsections 35(1) is violated and habitats supporting fisheries resources are altered, destroyed, or degraded without such authorizations from the Minister; it states:

*"Every person who contravenes subsection 35(1) is guilty of*

- a. *an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or both;*

Or

- b. *an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or both."*

### 3.2.2. Species at Risk Act (SARA)

The *Species at Risk Act* (SARA) was proclaimed in June 2003, and aims to protect vegetation, fish, and wildlife species from becoming extinct or lost in the wild, and to help species recover to sustainable numbers.

SARA makes it an offence to kill, harm, harass, capture, take, possess, collect and sell species at risk protected by the Act. Under the Act, it is also illegal to destroy or damage critical habitats necessary for protected species survival and recovery; these include the areas wild species need to live, find food, reproduce and raise their young. Impacts of any degree on the habitat of threatened or endangered species can have catastrophic effects on species survival and should be avoided at all times.

Species protected under SARA are those listed in Schedule 1 of the Act as endangered, threatened or extirpated. For **aquatic species and birds** listed in the *Migratory Birds Convention Act, 1994*, the prohibitions apply **everywhere** in Canada. For **all other species** listed in SARA Schedule 1, the Act applies to those found on **federal land**. Other species at risk in Canada are primarily protected by provincial or territorial laws. However, if these species are not effectively protected, SARA has provisions that act as a safety net authorizing the Canadian government to protect them.

SARA is primarily enforced by several federal agencies including Fisheries and Oceans Canada, Environment Canada, and Canadian Heritage (through the Parks Canada Agency), although provincial and territorial governments may also play a role through policies and regulations established under the Accord for the Protection of Species at Risk.

Summary convictions (less serious) under SARA can result in fines of up to \$300,000 for a corporation, up to \$50,000 for a non-profit corporation and up to \$50,000 and/or up to 1 year imprisonment for individuals. Indictable offences (more serious) under SARA can result in fines of up to \$1,000,000 for a corporation, up to \$250,000 for a non-profit corporation and up to \$250,000 and/or up to five years imprisonment for individuals.

Under SARA, you may need to apply for a permit to engage in an activity that will affect a listed species or its habitat. Agreements, permits or licenses may be issued for

scientific research, an activity that benefits the species or enhances its chances of survival in the wild, or an activity that has an incidental effect on the listed species. If you determine that a listed species will be negatively affected by your work, the federal government may require that you notify them. In general, Environment Canada is responsible for overall administration of SARA, except when the Act gives responsibility to either Fisheries and Oceans Canada or Parks Canada Agency.

### **3.2.3 Navigable Waters Protection Act (NWP)**

The *Navigable Waters Protection Act* of Canada protects the public right of free navigation in Canadian waters through the regulation of any activity in, around, under, and over navigable waters. Navigable waters are defined as including any body of water capable of being navigated by any type of floating vessel for the purpose of transportation, recreation, or commerce. The Canadian Coast Guard and the DFO administer the NWP.

Authorization under this Act is required for activities that may obstruct navigable waters, including new and replacement stream and river crossing work and work below the high-water mark, such as dock installations, channel maintenance, and shoreline and bank protection. The design of our works must not hinder appropriate navigation of navigable waters. Usually works that are regulated under the *Navigable Water Protection Act* are also those that may result in a HADD under the *Fisheries Act*. When planning such works, you are required to provide project information to DFO for review.

## **3.3 TERRITORIAL POLICY AND REGULATIONS**

### **3.3.1 The Department of Environment and Natural Resources (ENR)**

On April 1, 2005 the Department of Environment and Natural Resources (ENR) was created. The mandate of the Minister and the Department of Environment and Natural Resources is to promote and support the sustainable use and development of natural resources and to protect, conserve and enhance the Northwest Territories environment for the social and economic benefit of all Northwest Territories residents.

The ENR administers several territorial acts, including the:

- *Environmental Protection Act,*
- *Environmental Rights Act,*
- *Forest Management Act,*
- *Natural Resources Conservation Trust Act,*
- *Pesticide Act,*
- *Waste Reduction and Recovery Act,*
- *Water Resources Agreements Act, and*
- *Wildlife Act (currently being updated).*

The ENR is responsible for three key management areas. Within this framework, ENR responsibilities relating to roads and highway operation, construction and maintenance include:

### **1. Environment**

- Providing information and programs in the areas of air quality, hazardous substances, waste management and impact analysis, and maintaining a 24hr. Spill Line (for the reporting of hazardous materials spills) at **(867) 920-8130**.

### **2. Wildlife Management**

- Assessing and monitoring wildlife, habitat, species at risk, biodiversity and address impacts on wildlife from human activity.

### **3. Forest Management**

- Protecting, conserving and enhancing forest resources of the NWT.

More information on the ENR and the various pieces of territorial legislation may be obtained by contacting the Department through the following:

Mail: North Slave Region  
Box 2668,  
Yellowknife, NT X1A 2P9  
Phone: (867) 873-0639  
Fax: (867) 873-0639  
<http://www.enr.gov.nt.ca>

### **3.3.2 Northwest Territories Water Act (NWTWA)**

The *Northwest Territories Water Act* (NWTWA) was established in 1992 and governs the water resources in the NWT. The NWTWA along with the NWT Water Regulations, are the specific legislation that pertains to water use and disposal of waste in the Mackenzie valley. The NWTWA is one of several pieces of legislation that deal with specific areas of resource management within the *Mackenzie Valley Resource Management Act* (MVRMA). The regulators for the NWTWA are the land and water boards in the valley and the NWTWA is enforced by Department of Indian and Northern Affairs Canada (INAC) inspectors. Water Licenses and land use permits are issued by the various land and water boards.

### **3.4 SPILLS RESPONSE**

In spite of taking all reasonable safety precautions, spills will inevitably occur when working with heavy machinery in and around watercourses. The most common spills involve diesel fuel and other hydrocarbons, but can also include hazardous substances such as hydrochloric acid, methanol or cyanide. Because of this reality, it is important to know what measure to take in an event that you are involved in or come across a spill during your work or travels.

### **3.4.1 Procedures in Responding to Spills and Reporting Spills (GNWT, 1993)**

1. Ensure public and personal safety: If you can't identify the material, consider it hazardous.
2. Stop or reduce the flow of the product at its source: Attempt this **ONLY** if there is **NO RISK** to personal safety.
3. Assess seriousness of the spill.
4. Report the spill. Call the 24-Hour Spill Report Line at **(867) 920-8130**. Collect calls are accepted. Include the following information:
  - Location and time of spill
  - Product and amount of spill
  - Cause of spill and party responsible (if know)
  - Present condition of spill site
  - Hazards to public safety or environment
5. Spill Clean up: The party responsible for the spill is responsible for the clean-up. Once you have reported the spill, the operator taking your call will identify to you which governmental agency will be the "Lead Agency" or "Responding Government Agency" and may also direct you on how to proceed with the clean-up.
6. Notify individuals, families or community authorities if it is apparent that a water supply may be endangered by the spill.
7. Attempt to stay in contact with the Lead Agency so that additional direction from them with respect to required action at the site can be transmitted in the early stages of the spill incident.
8. Provided there is no personal danger, attempt to contain the spill as directed by the Lead Agency.

### **3.4.2 Spills In/Over or Near Water**

Spills in and around watercourses are generally considered the most serious of all types of spills. Water acts as a carrier of the contaminant and can lead to immediate and long-term impacts on water quality, fisheries or the aquatic food chain at the contaminated site, as well as downstream from the source. Once a contaminant reaches water it is generally very difficult to contain or clean up. The operator must report all spills.

### **3.4.3 Spills on Land**

For small spills that occur on land, the surface organic layer in and around the spill site will naturally act as an absorbent and keep the spill localized. It is therefore easier to contain spills before they can create long-term detrimental effects to the environment.

Once you have reported the spill and determined that there is no personal danger, try to stop or reduce the flow of the spill at its source.

If the spill is gas or diesel, instruct anyone around the site not to smoke or otherwise cause the material to ignite. Only under the direction of the "Lead Agency" or "Responding Government Agency" should intentional ignition of the spill be used as a mitigation measure.

## **4.0 TRAFFIC MANAGEMENT**

### **4.1 Public Use**

The Project Company shall, subject to the Technical Requirements keep the Project open for safe public use from Traffic Availability until the end of the Term.

All O&M shall be carried on so as not to interfere unnecessarily with:

- The convenience of member of the public and other infrastructure users; or
- The access to, use and occupation of public or private roads or footpaths, footways or bicycle paths

At all times management of traffic on the Project and any intersecting roadways within the Road Right of Way shall be the responsibility of the Project Company. Users shall be subject to the same laws as those using the remainder of the public highway network, and the enforcement of those laws shall be the responsibility of the police.

The Project Company shall ensure appropriate safety measures for workers and users are undertaken and implemented from design to construction and that traffic control is undertaken during construction at all locations. The Project Company shall also be responsible for traffic management during the Construction Period and the O&M Period.

## **4.2 Traffic Accommodation Exceptions**

Some maintenance work has a minimal impact on traffic flow and therefore may not require full signing and/or traffic. Examples that may fall into this category include but are not limited to:

- Removal of isolated debris (tire treads or other small objects);
- Removal of small animals from the roadway;
- Spontaneous filling of sporadic potholes (involving at least two workers);
- Normal snow ploughing and ice control operations;
- Washing and delineators or signs; and
- Other work that is entirely off the roadway surface.

The Project Company shall define a traffic management policy for these specific expected situations. This traffic management policy, subject to any agreed amendments, shall be the standard throughout the Term. Any traffic management policy submitted to the GNWT pursuant to this provision does not release the Project Company from the obligations to keep the Project safe for both workers and the traveling public.

## **5.0 ACTS/ SAFETY STANDARD**

The following is the list of some of the governing legislations and acts related to the safety. It will be the Project Company's responsibility to ensure compliance to all of the applicable legislations, acts, and laws.

- Dangerous Goods Transportation & Handling Regulation
- Occupational Health and Safety Act
- Workers Compensation Act
- Explosive Use Act
- Convictions Procedure Acts
- Navigable Waters Protection Act
- Fish Habitat Protection; Fisheries Act - Department of Fisheries and Oceans (DFO)
- Species at Risk Act (SARA)
- Northwest Territories Water Act



- Environmental Protection Act; Environmental Rights Act; Forest Management Act; Natural Resources Conservation Trust Act; Pesticide Act; Waste Reduction and Recovery Act; Water Resources Agreements Act; Wildlife Act - Department of Environment and Natural Resources Government of Northwest Territories
- Mackenzie Valley Land & Water Board
- Spill Management plan – Spill reporting
- Wildlife Accident Reporting and Mitigation
- Manual of Uniform Traffic Control Devices for Canada - Pedestrian Crossing Control; Cyclists; Standard Traffic Signs and Pavement Markings; Wildlife Warning Signs; Service and Attraction Signs; Supplemental Signs – welcome to community, visitor info, vertical clearances etc.
- Count Station (if any)
- Road Geometric – Vertical Clearance; Vertical & Horizontal Alignment; Sight Distance; Design Speed – Minimum & Maximum speed etc.
- Shoulder Rumble Strips (if required)
- Roadside Barriers – Railings
- Maintenance – Snow Removal; Dead Animal Removal; Guide rail Fixing; Washing etc.
- Inspection of the Structure

## Deh Cho Bridge

### Schedule 8 Project Disclosure

The attached list is the compilation of the key documents for the project.

	DOCUMENT	ORIGINATOR	DATED m/d/y	RECEIVED m/d/y
	<b>REPORTS</b>			
R1	Project Description, Preliminary Design Drawings, Cost Estimate, Updated July 2003	Jivko Engineering & J.R. Spronken & Associates	07/30/03	
R2	Proposed Deh Cho Bridge Site Investigation Report Fort Providence NT	EBA Engineering Consultants Ltd.	08/03	
R3	Preliminary Phase 1 Review Preliminary Review Comments on Proposed Design for Deh Cho Bridge October 21, 2003	Territorial advisors	10/21/03	10/21/03
R4	Updated Hydrotechnical Information for the Deh Cho Bridge at Fort Providence	Trillium Engineering	01/04	
R5	A Study for Wind Effects for Deh Cho Bridge, Fort Providence, NWT – Interim Report – Section Model Study	Alan G. Davenport Wind Engineering Group by Case and King	01/04	
R6	Project Description and Preliminary Drawings -Updated January 2004	Jivko Engineering	01/15/04.	
R7	Fisheries Assessment of McKenzie River at Fort Providence, NT – Proposed Deh Cho Bridge	Golder Associates	01/22/04	
R8	Geotechnical/Material Evaluation, Proposed Deh Cho Bridge, Fort Providence, NT	EBA Engineering Consultants Ltd.	02/04	
R9	Conclusions on Ice Load and Scour Recommendations by Trillium Engineering dated January 2004	NHC	02/12/04	2/13/04
R10	Comments on General Arrangement and Substructure Drawings	NHC	04/27/04	
R11	Draft Report – Hydrotechnical Aspects of Proposed Design	Northwest Hydraulic Consultants	05/06/04	
R12	Draft Letter Re: Deh Cho Bridge – Superstructure Review Comments Based on 2004 April 16 Preliminary Drawings	Buckland & Taylor	05/13/04	
R13	Draft Report – Deh Cho Bridge, Hwy 3 and McKenzie River Bridge, Geotechnical Review	Thurber Engineering Ltd.	05/17/04	
R14	Pier Scour Issues	NHC	05/20/04	
R15	Interim Wind Study Results – Truss Configuration	Letter Report by Case/King	05/26/04	06/03/04
R16	Developers Assessment Report – Addendum 1 of May 28, 2004	Deh Cho Bridge Corporation	06/10/04	
R17	Deh Cho Bridge Project Conceptual Review Report	Territorial Advisors	09/07/04	

Schedule 8  
Project Disclosure

	DOCUMENT	ORIGINATOR	DATED m/d/y	RECEIVED m/d/y
R18	Follow-up Review Comments on Proposed Design for Deh Cho Bridge	Territorial Advisors	11/24/04	
R19	Schedule 10 – Design requirements	GNWT	02/15/05	
R20	Fatigue Analysis Report Deh Cho Bridge Across the MacKenzie River, Yellowknife Highway #3, North West Territories	Dr. Shaw, Materials Science Research Ltd	03/14/05	
R21	Deh Cho Bridge Cable System Assessment	Buckland & Taylor	03/15/05	
R22	Deh Cho Bridge Cable System Assessment	Buckland & Taylor	03/15/05	
R23	Initial Review of the Dr. Shaw Fatigue Study	Territorial Advisors	04/14/05	
R24	H.J. Gerein Report	HJ Gerein	01/31/06	
R25	Steadman Report and Estimate	Anthony Steadman	03/28/06	
R26	Independent Engineer Overview Report	CH2MHill	02/13/08	
	<b>DRAWINGS</b>			
D1	Preliminary Drawings	J.R. Spronken	05/25/04	
D2	Deh Cho Bridge Drawings	J.R. Spronken	02/24/05	
D3	Deh Cho Bridge Drawings	J.R. Spronken	02/20/06	
	<b>CORRESPONDANCE</b>			
C1	Letter to Deh Cho Bridge Corporation Re: Deh Cho Bridge Proposal Navigation Channel	Northern Transportation Company Ltd	01/09/03	05/27/04
C2	Response to Schedule 18 Bridge Design Parameters	JRSA	08/04/03	08/25/03
C3	Reply to 21 October 2003 Assessment, Preliminary Phase 1 Review, Preliminary Review Comments on Proposed Design of Deh Cho Bridge	J.R. Spronken	10/24/03	
C4	Reply to 24 November 2003 email, Follow-up Review Comments on Proposed Design for Deh Cho Bridge	J.R. Spronken	02/03/04	
C5	Use of Dywidag Bars vs. cables	J.R. Spronken	05/12/04	05/12/04
C6	Shear Analysis – Shear Development Between Precast Slab and Top Chord	J.R. Spronken	06/16/04	06/17/04
C7	Synopsis on Design of Structure and Its Components	J.R. Spronken	07/30/04	08/09/04
C8	Letter to Jivko Engineering Re: Suspension Cables, Deh Cho Bridge	J.R. Spronken	07/30/04	
C9	Letter Re: Deh Cho Bridge – Conceptual Review Report of October 12, 2004	J. Jivkov	10/12/04	
C10	Deh Cho Bridge Joint technical Conference – Decision Matrix of Nov. 12, 2004	GNWT	11/12/04	
C11	Letter to Gamble Re Deh Cho Bridge Design of Nov.15/04	K. McLeod	11/15/04	11/22/04
C12	Letter Re:Deh Cho Bridge Design – Outstanding Issues Identified in Draft notes from the Joint Technical Conference of 19 October 2004	Gamble	12/21/04	

Schedule 8  
Project Disclosure

	DOCUMENT	ORIGINATOR	DATED m/d/y	RECEIVED m/d/y
C13	Letter Re: Deh Cho Bridge Project – Design Review	Gamble	01/30/05	
	<b>EMAILS</b>			
E1	Barge Information	J.R. Spronken	09/22/03	
E2	Fatigue Analysis Draft Report of Jan. 20/04 Letter from Tang Re Bars vs Cables of Jan. 18/05	Jivkov	01/25/04	
E3	Rationale for Bar Stay System/Deck Attachment/Guardrail Configuration	J.R. Spronken	04/30/04	04/30/04
E4	Meeting 13 February 2004 – Items 5.4, 5.5, 5.6	J.R. Spronken	04/30/04	
E5	Use of Dywidag Bars vs Cables	J.R. Spronken	05/12/04	
E6	DCBC Comments on Minutes of May 26 Meeting(includes bridge approaches drawings)	Jivko Jivkov	06/14/04	
E7	Shear analysis	J.R. Spronken	06/17/04	
E8	Item 1.5 (Shear Connection)	J.R. Spronken	11/10/04	
E9	Item 1.8 Rideability	J.R. Spronken	11/10/04	
E10	Item 1.3 Hangar Bars	J.R. Spronken	11/10/04	
E11	Item 1.5	J.R. Spronken	11/10/04	
E12	Deh Cho – Outstanding Design Issues	Jivkov	12/21/04	
E13	Item 1.9 Curb Connection	J.R. Spronken	12/30/04	
E14	Item 1.9 Curb Connection	S. Smith	01/03/05	
E15	Bar Connection	J.R. Spronken	01/30/05	
E16	Deh Cho Bridge Information Request – Fatigue Data -050211.pdf	J.R. Spronken	02/11/05	
E17	Deh Cho – Cable System Review	D. Gagnon	03/02/05	
E18	Deh Cho Fatigue Review etc	D. Gagnon	03/28/05	
	<b>MEETINGS</b>			
M1	Meeting of Sept. 30, 2003	BPTEC	09/30/03	10/03/03
M2	Meeting of May 26 2004	BPTEC	05/26/04	5/26/04
M3	Deh Cho Bridge Meeting Notes December 11, 2003	GNWT	12/03/05	

## **RESTRICTION ON TRANSFER AGREEMENT**

**THIS AGREEMENT** is made the 22 day of February, 2008

Amongst:

**THE MINISTER OF TRANSPORTATION ON BEHALF OF  
THE GOVERNMENT OF THE NORTHWEST  
TERRITORIES AND THE COMMISSIONER OF THE  
NORTHWEST TERRITORIES**

**("GNWT")**

- and -

**DEH CHO BRIDGE CORPORATION LTD.**, a corporation  
incorporated under the laws of the Northwest Territories

**(the "Project Company")**

- and -

**DEH GAH GOT'IE FIRST NATION AND FORT PROVIDENCE MÉTIS  
COUNCIL**

**(collectively, the "Shareholders" and individually, a "Shareholder")**

### **BACKGROUND:**

The Project Company has entered into the Deh Cho Bridge Project Concession Agreement dated September 28, 2007 with GNWT pursuant to which GNWT granted to the Project Company certain rights with respect to the Facility, which include, *inter alia*, a long-term lease of the Facility Lands.

Concurrent with the execution and delivery of the Concession Agreement, the Project Company and the Shareholders agreed to enter into this agreement with GNWT because GNWT, as a matter of public policy, does not want a Change of Control to occur during the Restricted Period and accordingly wishes to prevent:

- (a) the Project Company, directly or indirectly, from issuing or allotting any Securities during the Restricted Period if that would result in a Change of Control; and
- (b) the Shareholders from Disposing of any Securities, either directly or indirectly, during the Restricted Period if such Disposition would result in a Change of Control.

**IN CONSIDERATION** of the premises and the mutual agreements in this Agreement, and other consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

**"Call Option"** has the meaning set forth in Section 7;

**"Change of Control"** a Change of Control shall be deemed to have occurred as soon as:

- (a) a Person or Persons, other than a Shareholder and/or a Member of the Fort Providence Aboriginal Community, either individually or collectively, through any means whatsoever, including, without limitation, a Disposition, subscription, issuance or allotment of Securities, in fact controls the Project Company in any manner, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise; or
- (b) the Shareholders and Members of the Fort Providence Aboriginal Community, either individually or collectively, through any means whatsoever, including, without limitation, a Disposition, subscription, issuance or allotment of Securities, cease to be the beneficial owners of the majority of the Voting Securities and the majority of the Equity Securities,

assuming for the purposes of any determination of Change of Control the conversion or exchange into Securities of all securities which are convertible into or exchangeable for Securities and the exercise of all rights attached to securities which entitle the holder thereof to purchase or otherwise acquire Securities;

**"Concession Agreement"** means the Deh Cho Bridge Project Concession Agreement between GNWT and the Project Company dated September 28, 2007, as amended to the date hereof and as the same may be further amended from time to time;

**"Cost Price"** means, with respect to any Securities, the aggregate of the following amounts:

- (a) the original subscription price paid for such Securities;
- (b) contributions made directly to the Project Company from the Federal Government of Canada, in the same proportion as such Securities bear to the aggregate issued and outstanding Securities;
- (c) reductions to the guaranteed maximum price of the design, development and construction services pursuant to the GMP Reduction Agreement made effective February 22, 2008 between the Project Company, Atcon Construction Inc, Jivko Jivkov and Andrew Gamble (less Incremental Equity as defined therein), in the same proportion as such Securities bear to the aggregate issued and outstanding Securities; and
- (d) all other contributions of a like nature that benefit and enhance the value of such Securities,

net of any capital distributions on or on account of such Securities.

**"Default"** means, with respect to a Shareholder or the Project Company, the taking of, or failing to take, any action or suffering or permitting any action or omission on the part of such Shareholder or the Project Company which results in a breach of its obligations under this Agreement;

**"Disposition"** means:

- (a) any Transfer of, or the creation of any Encumbrance (other than a Permitted Encumbrance) on, any property, assets or securities of any kind; and
- (b) any agreement to Transfer or to create an Encumbrance (other than a Permitted Encumbrance) on, any property, assets or securities of any kind,

and **"Dispose of"** has a corresponding meaning;

**"Encumbrance"** means any encumbrance of any kind whatever and includes a security interest, mortgage, lien, hypothec, pledge, hypothecation, assignment, charge, trust or deemed trust (whether contractual, statutory or otherwise arising), or any other right, option or claim of others of any kind;

**"Equity Securities"** means all securities of the Project Company, including without limitation debt securities (other than debt securities evidencing indebtedness incurred in connection with the financing of the construction of the Facility by the Project Company or the operation of the Facility, provided such indebtedness complies with the provisions of and is otherwise permitted under the terms of the Concession Agreement), which are not Voting Securities, of any kind or class, and all securities into which any such security may be converted, exchanged or re-classified or, in the event of a subdivision, re-division, reduction, combination or consolidation of such securities, then a reference to Equity Securities shall thereafter include the securities resulting from such subdivision, re-division, reduction, combination or consolidation, and **"Equity Security"** means any one of them;

**"Issued Shares"** means the two issued and outstanding Class A Shares in the capital of the Project Company held by each Shareholder and **"Issued Share"** means any one of them;

**"Member of the Fort Providence Aboriginal Community"** means any of the Deh Gah Got'ie First Nation and the Fort Providence Métis Council and any corporation, partnership, trust or other person (individually a "Member Entity" and collectively the "Member Entities") in which they, individually or together, legally and beneficially own all of the issued and outstanding securities, units or other interests therein (including without limitation debt securities) (the "Member Interests"), including, without limitation, Digga Enterprises Ltd. (provided evidence of such ownership of Digga Enterprises Ltd. satisfactory to GNWT is provided to GNWT), provided that such Member Entity is not in fact controlled by any person other than, individually or together, the Deh Gah Got'ie First Nation and the Fort Providence Métis Council in any manner, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise, and **"Members of the Fort Providence Aboriginal Community"** means all of the members and such Member Entities collectively;

**"Permitted Encumbrance"** means (i) any involuntary Encumbrance created by statute not attributable to any act or omission of the Project Company or the holder of the Security, and (ii) any Encumbrance on the Securities in favour of a Lender, in respect of indebtedness incurred in connection with the financing of the construction of the Facility by the Project Company or the operation of the Facility, and any extension, renewal or refinancing of such indebtedness, provided such Encumbrance and indebtedness complies with the provisions of and is otherwise permitted under the terms of the Concession Agreement;

**"Restricted Period"** means the Term of the Concession Agreement;

**"Securities"** means Equity Securities and Voting Securities and **"Security"** means any one of the Securities;

**"Voting Securities"** means all of the Class A Shares and Class B Shares in the capital of the Project Company, and all other securities of the Project Company of any kind or class with respect to which the holders thereof have the right to vote either under all circumstances or in certain circumstances or in certain events (whether or not such circumstances or events exist or have occurred); including, without limitation, the Issued Shares, and any securities into which they may be converted, exchanged or re-classified, or in the event of a subdivision, re-division, reduction, combination or consolidation of such shares, then a reference to Voting Securities shall thereafter mean the shares resulting from such subdivision, re-division, reduction, combination or consolidation; and **"Voting Security"** means any one of them; and

**"Transfer"** means any sale, assignment, lease, sublease, gift, exchange, transfer or other disposition, and the entry into of any merger, amalgamation, consolidation or reorganization by an entity shall be deemed to be a **"Transfer"** for the purposes of this Agreement.

Terms defined in the Concession Agreement and used herein have the same meaning herein as in the Concession Agreement, unless otherwise defined herein or unless the context otherwise requires.

## 1. Representation and Warranties

Each of the Project Company and the Shareholders makes the following representations and warranties to GNWT with respect to itself as at the date of execution of this Agreement and confirms that GNWT is relying upon such representations and warranties:

- (a) Issued Shares – all of the issued and outstanding shares of the Project Company are beneficially owned by and registered in the names of, or for the benefit of, the Shareholders and the Issued Shares are all of the issued and outstanding shares of the Project Company;
- (b) Title to Issued Shares – the Shareholders are the beneficial owners of the Issued Shares free and clear of all Encumbrances and any other rights of others, other than Permitted Encumbrances;
- (c) No Pre-Existing Agreements – there is no contract, option, right in equity or at law or otherwise binding upon or which at any time in the future may become binding upon:



- (i) any of the Shareholders or the Project Company to Dispose of any of the Securities;
  - (ii) the Project Company to Dispose of its undertaking, property or assets, other than in the ordinary course of its business; or
  - (iii) the Project Company to allot or issue any of the unissued Securities of the Project Company or to create any additional class or classes of Securities, other than rights granted to Atcon Holdings Inc. to subscribe for Class A Shares of the Project Company, and other than binding obligations on the Project Company to procure additional equity capital pursuant to the terms of the Concession Agreement and the terms of the indebtedness incurred in connection with the financing of the Facility which in each case have been Approved by GNWT;
- (d) Corporate Authority:
- (i) each of the Shareholders and the Project Company has good and sufficient power and right to enter into and deliver this Agreement;
  - (ii) the Project Company, its Shareholders and board of directors have taken all necessary actions, steps and other proceedings to approve or authorize validly and effectively, the entering into, execution, delivery and performance of this Agreement; and
  - (iii) this Agreement is a legal, valid and binding obligation of each of the Shareholders and the Project Company, enforceable against each of them in accordance with its terms, subject to:
    - (A) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and
    - (B) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of the court.

## **2. No Issuance of Securities of Project Company**

The Project Company shall not issue or allot any Securities of the Project Company, and the Shareholders shall not permit the issuance or allotment of any securities, units or other interests in a Member Entity, to any Person or Persons during the Restricted Period, if, as a result, a Change of Control would occur. No Encumbrance on or of such Securities or Member Interests shall be created or permitted by the Project Company or the Shareholders, as the case may be, during the Restricted Period except for a Permitted Encumbrance. No Permitted Encumbrance referred to in clause (ii) of the definition of such term on or of any such Securities or Member Interests shall be created or permitted by the Project Company or the Shareholders, as the case may be, during the Restricted Period unless the encumbrancer agrees in writing with GNWT to be bound by the provisions of this

Agreement and, to the extent applicable, by the provisions of Articles 17 and 18 of the Concession Agreement.

**3. No Disposition of Securities**

During the Restricted Period, no Shareholder shall directly or indirectly, Dispose of any Securities acquired by or issued to such Shareholder or permit the direct or indirect Disposition of any Member Interest, if, as a result, a Change of Control would occur.

No Encumbrance on or of the Securities or Member Interests shall be created or permitted by a Shareholder during the Restricted Period except for a Permitted Encumbrance. No Permitted Encumbrance referred to in clause (ii) of the definition of such term on or of such Securities or Member Interests shall be created or permitted by a Shareholder during the Restricted Period unless the encumbrancer agrees in writing with GNWT to be bound by the provisions of this Agreement and, to the extent applicable, by the provisions of Articles 17 and 18 of the Concession Agreement.

The Shareholders shall ensure that the Project Company does not issue or allot any Securities, and that each Member Entity does not issue or allot any securities, units or other interests in itself, to any Person or Persons during the Restricted Period, if, as a result, a Change of Control would occur.

**4. Prohibition on Becoming a Distributing Corporation**

During the Restricted Period, the Project Company shall not (a) become a distributing corporation within the meaning of the *Business Corporations Act* (Northwest Territories), or (b) enter into any transaction or take any action (including, but not limited to, the issuance or distribution of its Securities to the public or the amalgamation, merger or other combination with any other entity) that results in the Project Company or any successor entity becoming a reporting issuer or equivalent under the securities legislation of any of the provinces or territories of Canada or becoming a registrant under the securities laws of the United States or a state thereof.

**5. Certain Exceptions**

Notwithstanding anything to the contrary herein, GNWT may, in its Sole Discretion, consent in writing to any issuance, allotment or Disposition proposed to be made by a party hereto and any proposed issuance, allotment or Disposition which receives such consent shall not constitute a breach of or a Default under this Agreement.

**6. Default Under Concession Agreement**

A Default by the Project Company or any Shareholder hereunder shall, following the expiry of any notice and curative period provided for herein, if any, constitute an Event of Default under the Concession Agreement and shall entitle GNWT to exercise all of its rights and remedies thereunder.

**7. Remedies For Breach**

- (a) Default by Project Company or Shareholder - In order to secure the performance of the Project Company's and each Shareholder's obligations under this Agreement, each Shareholder hereby grants to GNWT an option to purchase (a "Call Option") all of the Securities of the Project Company owned by such Shareholder directly or

indirectly. Subject to subsections 7(b) and (c), a Call Option shall become exercisable by GNWT if, during the Restricted Period, there occurs a Default on the part of the Project Company or such Shareholder. The exercise price of a Call Option shall be the Cost Price of the Securities owned directly or indirectly by the Shareholder. Each Shareholder and the Project Company shall provide all information over which it has control to GNWT in order for GNWT to calculate the Cost Price. If the parties are unable to agree on the Cost Price, it shall be settled pursuant to the dispute resolution procedures set forth in the Concession Agreement which shall apply *mutatis mutandis*.

- (b) Closing - If a Default occurs during the Restricted Period, GNWT shall, within 30 days of the date that GNWT became aware of such Default, give to the defaulting party notice of the Default specifying in reasonable detail the nature and particulars of the Default. The defaulting party shall have 90 days from receipt of such notice to remedy the Default. If such Default is not fully remedied on or before the last day of such 90 day period (the "Effective Date"), then GNWT may thereafter, by notice ("Exercise Notice") to the defaulting party, exercise the Call Option. The closing of the purchase and sale of the Securities purchased pursuant to such Call Option, shall take place at the place specified in the Exercise Notice on the 20th Business Day after the Exercise Notice was given. On the closing, the defaulting party shall deliver to GNWT certificates evidencing the Securities sold duly endorsed in blank for transfer and shall deliver to GNWT a duly executed representation and warranty stating that the defaulting party has good and marketable title to such Securities free and clear of all Encumbrances (except for Permitted Encumbrances) and stating that the sale of Securities has been duly authorized by all necessary corporate action and other proceedings by the Project Company, its Shareholders and board of directors, and GNWT shall pay the purchase price for such Securities to the defaulting party by bank draft or certified cheque. The Call Option shall expire, if unexercised, on the first anniversary of the Effective Date.
- (c) Assignment - The Call Option and the rights of GNWT under this Agreement which relate thereto, are transferable by GNWT to any Person after the Effective Date, without the consent of the Project Company or any Shareholder.

## 8. Share Certificate Legend

All certificates representing Securities of the Project Company shall bear the following legend:

"The securities represented by this certificate are subject to the provisions of an agreement made the 22<sup>nd</sup> day of February, 2008 which contains restrictions on the right to transfer, pledge and otherwise deal with such securities. Notice of such restrictions and of the other provisions of such agreement is hereby given."

## 9. Right to Injunctive Relief and Specific Performance

Each Shareholder and the Project Company acknowledge that a breach of the covenants or provisions contained herein would cause GNWT to suffer loss which could not be adequately

compensated for by damages and that GNWT may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage to GNWT.

#### 10. Notices

All communications which may be or are required to be given by any party to any other party, shall be in writing and (a) delivered personally, (b) sent by prepaid courier service or by registered mail, or (c) sent by prepaid telecopier or other similar means of electronic communication to parties at their following respective address:

For the Project Company and each Shareholder:

Deh Cho Bridge Corporation Ltd.  
P.O. Box 299  
Fort Providence, NT X0E 0L0

Attention: Executive Director  
Telecopier: (867) 873-6543

For GNWT:

P.O. Box 1320  
Yellowknife, Northwest Territories  
X1A 2L9

Attention: Director, Transportation, Policy and Planning  
Telecopier: (867) 920-2565

with a copy to:

Legal Division  
Department of Justice  
P.O. Box 1320  
4903 – 49<sup>th</sup> Street  
Yellowknife NT X1A 2L9

Attention: Director  
Telecopier: (867) 873-0234

Any such notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telecopier or other electronic communication or on the second Business Day following the sending thereof by private courier or on the fifth Business Day following

the sending thereof by registered mail. Any party may from time to time change its address hereinbefore set forth by notice to the other parties in accordance with this Section.

## **General**

### **11. Time of the Essence**

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

### **12. Further Acts**

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each of the parties will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by any other party in order to cure any defect in the execution and/or delivery of this Agreement.

### **13. Jurisdiction**

This Agreement shall be governed by the laws of the Northwest Territories and the laws of Canada applicable therein. Each party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Northwest Territories.

### **14. Waiver**

Save as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

### **15. Entire Agreement**

This Agreement and the agreements contemplated herein constitute the entire agreement among the parties pertaining to all the matters herein. With respect to the matters dealt with herein but not otherwise, this Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

### **16. Severability**

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable, (i) the remainder of this Agreement or the application of such provision or portion thereof to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to and in accordance with the dispute

effectively entitles GNWT to have the same rights after the aforesaid determination of invalidity or unenforceability as before, GNWT shall have the right to enact and cause to come into force any law or regulation to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

**17. Counterparts**

This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same Agreement. This Agreement shall not be binding upon any party until it has been executed by each of the parties and delivered to all other parties.

**18. Enurement and Binding Effect**

This Agreement shall enure to the benefit of the parties hereto and in the case of the Project Company, its respective permitted successors and assigns and in the case of GNWT, its respective successors and assigns, and shall be binding upon the parties hereto and their respective successors and assigns.

**19. Remedies Cumulative**

The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such party may be lawfully entitled for the same default or breach.

**THE MINISTER OF TRANSPORTATION  
ON BEHALF OF THE GOVERNMENT OF  
THE NORTHWEST TERRITORIES AND  
ON BEHALF OF THE COMMISSIONER  
OF THE NORTHWEST TERRITORIES**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DEH CHO BRIDGE CORPORATION LTD.**

Per: Michael Vandell  
Name: Michael Vandell  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I/We have the authority to bind the corporation

**BERNA LANDRY, TRUSTEE FOR THE  
DEH GAH GOT'IE FIRST NATION**

Per: Berna Landry  
Name: Berna Landry  
Title: Trustee

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FORT PROVIDENCE MÉTIS COUNCIL  
(LOCAL 57)**

Per: Albert J. Larrety  
Name: Albert J. Larrety  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **SCHEDULE 10**

### **TECHNICAL SPECIFICATIONS AND STANDARDS**

**This schedule consists of:**

**Part 1: Technical Specifications and Design Requirements:**

**Part 2: Design Criteria and Standards**

#### **Part 1 - TECHNICAL SPECIFICATIONS AND DESIGN REQUIREMENTS**

##### **1.0 Responsibility for Detailed Design**

The Developer shall be responsible for the detailed design of all elements of the Facility, including the undertaking of geotechnical investigations, topographic surveys and other field investigations and technical analyses required to complete the designs in a professional and competent manner.

##### **1.2 Management of Design**

All detailed design functions for the Facility must be managed and coordinated by the Project Developer, who shall be responsible for the execution and delivery of all designs for the Facility and interfacing with the GNWT as may be required. The Designer must be a suitably qualified professional engineer registered by the Association of Professional Engineers of the Northwest Territories or another equivalent Canadian Professional Engineering Registration.

##### **1.3 Detailed Design Drawings**

The detailed design drawings for the Facility shall be sealed by qualified professional engineers registered by the Association of Professional Engineers of the Northwest Territories or another equivalent Canadian Professional Engineering Registration.

The design drawings must be prepared in accordance with the drawing standards of DOT using suitable and compatible software. Facility plan drawings for detailed design will be drawn at a scale of 1:500, profiles at a scale of 1:500 horizontal and 1:50 vertical and cross-sections at a suitable scale. Bridge drawings are to be prepared at appropriate scales. Plan drawings will be drawn at a scale of 1:200 unless the size of the structure precludes this, in which case scales of 1:250, 1:500, 1:1000, 1:1250 should be considered to obtain the largest plan possible within the space limits of an A1 size sheet. For other structural drawings the following scales are acceptable: 1:20 (or 1:200 and 1:2000 etc), 1:25, 1:30, 1:40, 1:50, 1:75, 1:100, 1:125. A comprehensive set of As-built drawings must be submitted to Project Board for acceptance.



## **1.4 Design Criteria**

The design criteria that must be used for the detailed design work are contained in this Schedule 10 Part 2 including Highway Design Criteria and Standards and Structural Design Criteria and Standards.

## **1.5 Quality Management for Design**

The Developer must develop a quality management plan for the detailed design processes to be followed during the detailed design phase(s). The design quality management plan will be a part of the overall project quality management system and must comply with ISO 9001 or with another recognized equivalent quality system acceptable to the Project Board.

The design quality management plan must address both the quality control and quality assurance aspects of all of the design processes required for the Facility, including the quality management organization, Internal review procedures and practices, e.g., peer reviews, participation of contractors in design development, involvement of engineering team during construction, conflict resolution methods and other measures, that will be adopted in executing and delivering quality designs. The GNWT will retain the services of a Technical Advisor Team and the Project will retain an Independent Engineer (IE) in accordance with Schedule 13.

## **1.6 Incorporating Safety in the Design**

The Developer will be responsible for preparing a design that addresses the safety requirements for the traveling public. The Developer will subject the design to a safety assessment and will address potential safety issues through the application of currently recognized best practices.

## **1.7 Responsibility for Quality Management**

The Developer shall be responsible for continued development and maintaining of its Quality Management System as a means of ensuring that all deliverables conform to specified requirements.

## **1.8 Management of Quality**

The Developer and its executive management are responsible for the on-going development and reviews of the Quality Management System to ensure it is implemented and effective. The Developer's Quality Manager will have the authority and responsibility for ensuring effective implementation and maintenance of the Quality Management System and who was the authority to stop work on the Project if quality is being compromised. The Quality Manager

must be a professional and must have demonstrated experience and training with the quality system standard to be employed.

### **1.9 Quality System Criteria and Guidelines**

The Developer's Quality Management Plan must be submitted to the Project Board for acceptance and must include its Quality Management System.

The Developer's Quality Management System will be documented via a Quality Manual which will include quality system procedures for all components of the Project including but not limited to: Development, Design, Construction, Operation, Management, Maintenance, Rehabilitation, Traffic Management, Public Communications and Environmental Management.



**SCHEDULE 10 Part 2**  
**DESIGN CRITERIA AND STANDARDS**

CLAUSE	ISSUE	REQUIREMENTS
<b><u>P R E A M B L E</u></b>		
	Design Standard	<p>All structures shall be designed to CSA-S6-00.</p> <p>The PTI Guidelines for Stay Cable Design, Testing and Installation 4th Edition are to be used as a reference in the design. Areas of the design where the PTI Guidelines have not been incorporated are to be documented. The Designer will collaborate with the GNWT TA and IE to compile this list.</p>
	Products and Materials	<p>Products and materials requiring Approval shall be submitted to the Developer for review. Only new materials shall be used. Timber structures shall not be used.</p>
<b><u>SECTION 1 - GENERAL</u></b>		
1.5.2.2	Class of Highway	Design for Class "A" highway. Modified for ADTT to be 200 trucks per lane as per agreement of October 2002
1.5.2.3	Design Life	Design life shall be a minimum of 75 years.

1.5.2.4	Structural Behaviour and Articulation	<p>To allow for the inexact fit of components of the deck and for increased rideability, the design shall allow sufficient capacity to include a wearing surface of 38 mm. See also Cl. 1.9.2.2.2 Deck Finish.</p> <p>All components of the structure shall be shall be grounded. All components to undergo the necessary testing.</p>
1.5.2.7	Environment	Impact assessment and mitigation measures shall comply with the requirements of Permits issued by regulatory agencies under Mackenzie Valley Resource Management Act. Impact assessment and mitigation measures shall be consistent with all permit conditions and shall consider environmental, archaeological, historical and aboriginal constraints.
1.5.4.4	Temporary Structures	Contractor is responsible for the design of all temporary structures which are to be certified and approved by the Engineer.
1.5.4.6	Quality Control and Assurance	Quality Management Plan (QMP) shall be consistent with the Alberta Transportation and Infrastructure Standards.
1.6.2	Structure Geometry	<ul style="list-style-type: none"> <li>• Lane width 3.70 m</li> <li>• Shoulder width 1.50 m</li> <li>• Sidewalk width 1.50 m (Future provision)</li> <li>• Maximum approach grades 3.0% (Note: 3.5% permitted if automated warning system installed)</li> </ul>
1.6.2.2	Clearances	Horizontal and Vertical roadway clearance on the bridge deck shall be consistent with Alberta Transportation requirements for High Load Corridor.
1.8.2	Approach Slabs	Approach slabs shall be provided if the height of the approach fills exceeds 3.0 m.
1.9.3	Maintenance Requirements	Provide maintenance access for the length of the structure. Under deck catwalk provided for the length of the structure.
1.9.3.1.2	Removal of Formwork	All formwork shall be removed.

1.9.3.2	Maintainability	A schematic replacement procedure, including all loads, shall be shown on the drawings for the deck, bearings and suspension system components.
1.10.1	Hydraulic Design - General	Hydraulic design shall be performed by a licensed Engineer experienced in the design of similar works. The hydraulic design shall consider the impact of the in-stream piers on channel construction at the proposed crossing location.
1.10.1.2	Normal Design Flood	<p>The normal design flood shall have a return period of 100 years.</p> <ul style="list-style-type: none"> <li>- 1 in 100 year high water level - elev. 152.44.</li> <li>- Design discharge at high water level - 10,500 cu.m per second</li> <li>- Design mean flow velocity - 1.8m per second.</li> <li>- Angle (skew) of flow to structure - 10 degrees right hand forward.</li> <li>- High water level for navigation - elev. 152.0</li> </ul>
1.10.1.3	Check Flood	The check flood shall have a return period of 200 years.
1.10.1.5	Design Flood Discharge	The method used to estimate the design flood discharge shall be documented in literature.

1.10.3	Location and Alignment	<p>Main span shall correspond with the existing main navigation channel defined as having the northern limit of the channel at the same location as the green buoy placed by the Coast Guard in 2002 located 319 south of the existing sheet piling of the north ferry landing.</p> <p>Minimum horizontal clearance of 185m to be provided between the piers of the main navigation span.</p> <p>Minimum vertical clearance of 22.5m to be provided above the high navigation water level to the underside of the bridge over the central 60% of the main navigation spans.</p> <p>Approval under the Navigable Waterways Protection Act is required</p>
1.10.4.4	Local Scour	The method used to depth of local scour shall be documented in literature.
1.10.5.2.2	Protection of Spread Footings	Minimum depth for spread footings shall be as per clause 1.10.5.2.1.
1.10.6.1	Backwater - General	The design elevation shall either be the normal design flood or ice jam downstream.

1.10.6.3	Assumed Depth of Scour	<p>Scour recommendations by Trillium Engineering &amp; Hydrographics Inc are established as follows:</p> <ul style="list-style-type: none"> <li>- top of footing to be minimum of 1.0m below streambed and backfilled with riprap</li> <li>- riprap aprons to be 0.6m thick layer of Class 1 rock extending 11m from the edges of the piers</li> </ul> <p>Monitoring program for placement of riprap and tracking of performance shall be required</p>
1.10.7	Soffit Elevation	<p>Clearance between soffit and high water shall not be less than 1.0 m. Requirements for freeboard shall comply with clause 1.10.8.2. Soffit elevation shall be determined in accordance with all necessary subject to Navigable Waterways Protection Act (NWPA) approval.</p>
<b><u>SECTION 2 - DURABILITY</u></b>		
2.4.2.9	Access	See clause 1.9.3.
<b><u>SECTION 3 - LOADS</u></b>		
3.4.4	Serviceability Limit States	The deflection limit shall be for a bridge without sidewalk. The method used to calculate vibration shall be documented. [Provision for a future sidewalk has been made].
3.5.1	Load Factors and Load Combinations - General	The loading combinations to be considered and the load factors to be used shall be as shown in Tables 3.5.1(a) and (b). The service life of the bridge is considered as 75 years. The total factored load effect used for each applicable load combination for construction loads shall not be less than 1.25 times the sum of the unfactored load effects included in the combination.



3.8.2	Design Lanes	The bridge shall be designed for two lanes.
3.8.3	CL-W Loading	The bridge shall be designed for CL-750 loading and special truck Nos. 4, 5, and 8 as per Alberta Transportation Standards and Section 14 of CHBDC. Vehicles and load factors shall be shown on the drawings.
3.8.4.5.1	Dynamic Load Allowance - General	The dynamic load allowance shall be as specified in Section 3.8.4.5. Lower values based on tests or dynamic analysis shall not be used.
3.9.4.1	Temperature Range	<ul style="list-style-type: none"> <li>• Minimum daily mean temperature: -44°C</li> <li>• Maximum daily mean temperature: 25°C</li> </ul>
3.10.1.6	Wind Loads - Alternative Methods	Alternative methods, including wind tunnel testing, shall be used for structure types described in clause 3.10.5.1, including suspended cable or bar supported structures.
3.12.1	Ice Loads - General	<p>Ice loads shall be determined by an Engineer experienced in the design of similar works. The calculations shall consider the impact of the in-stream piers on channel constriction at the proposed crossing location.</p> <p>Ice design parameters established in Trillium Engineering &amp; Hydrographics Inc Reports of November 2002 and January 2004</p> <ul style="list-style-type: none"> <li>-Ice strength to CAN/CSA-S6-00 1100 kPa</li> <li>-Ice design thickness - 1.83m</li> <li>-Ice force elevation (centroid of ice) - Elev. 155.2</li> <li>- Minimum bridge soffit elevation to provide 1.0m freeboard against ice shove - Elev. 159.0</li> <li>Angle (skew) of ice flow to piers - 19 degrees</li> </ul>
3.14.2	Bridge Classification	The bridge shall be classified as Class II.

3.14.5	Design Vessel	<p>The design vessel established as WH Horton Tug and series 1500B barges with deadweight of 2500 T.</p> <p>The design vessel shall be subject to Transport Canada approval under the Navigable Waters Protection Act.</p>
<b><u>SECTION 4 - SEISMIC DESIGN</u></b>		
4.4.2	Importance Category	The bridge shall be classified as an emergency route structure.
4.6.6	Fill Settlement and Approach Slabs	See clause 1.8.2.
<b><u>SECTION 5 - METHODS OF ANALYSIS</u></b>		
5.4.2.2	Large Deflection Theory	The bridge shall be analyzed using large deflection theory.
<b><u>SECTION 6 - FOUNDATIONS</u></b>		
6.5.6	Report	The report shall be signed and sealed by two Engineers, one of which shall be a principal Engineer.
6.6.2.1	Procedures	The geotechnical resistance factors shall comply with Table 6.6.2.1.
6.6.2.3	In-Situ Tests	The method of interpretation used shall be documented.
6.7.2	Calculated Geotechnical Resistance at ULS	The method used shall comply with clause 6.7.2.

6.8.10.2	Splices	Timber piles shall not be used.
6.10.4.2	Anchors - Acceptance Criteria	Acceptance criteria shall be as provided in the "Recommendations for Pre-stressed Soil and Rock Anchors, Post Tensioning Institute, 1996".
6.12.3	Mechanically-Stabilized Earth Structures -Backfill	Backfill shall comply with the requirements of the MSE Wall manufacturer's specifications.
6.13.2.4	Pole Foundations - Serviceability Limit States	Rotation shall be calculated using a method documented.
<b><u>SECTION 7 - BURIED STRUCTURES</u></b>		
not applicable		
<b><u>SECTION 8 - CONCRETE STRUCTURES</u></b>		
8.4.1.1	Standards and Specifications	Materials, methods of material testing and construction practices shall conform to CSA-A23.1 and CSA-A23.3. This is already in the Code.
8.4.1.2	Concrete Strength	Minimum concrete strengths shall comply with clause 8.4.1.2.
8.4.3.1	Tendons - Type and Specification	Coated strands shall not be used.
8.4.4.1	Anchorage for Post-tensioning Tendons	Details of dynamic tests for anchorages for external unbonded tendons shall be documented.

8.4.5.1	Grout - Post-tensioning	Grout for post-tensioning ducts shall conform to CSA A23.1 and shall have a minimum compressive strength of 35 MPa at 28 days.
8.11.2.1	Concrete Quality	The minimum concrete strengths and maximum water/cement ratios shown in Table 8.11.2.1 shall apply.
8.11.2.1.5	Slip-Form Construction	Slip-form construction shall not be used.
8.11.2.3	Corrosion Protection for Reinforcement, Ducts and Metallic Components	Steel reinforcement, anchorages and mechanical connections specified for use within 75 mm of a surface exposed to moisture containing de-icing chemicals shall be protected against corrosion.
8.11.2.7	Waterproofing	50 mm cover is provided. The use of salt is not recommended and the Operator is to use a non corrosive product or gravel (sand).
8.11.3.3	Debonding of Pretensioning Strands	Debonding of pretensioning strands is not permitted.
8.18.2	Minimum Slab Thickness	Minimum slab thickness shall comply with clause 8.18.2.
<b><u>SECTION 9 - WOOD STRUCTURES</u></b>		
not applicable		
<b><u>SECTION 10 - STEEL STRUCTURES</u></b>		
10.4.1	Materials - General	Materials, methods of material testing and construction practices shall confirm to CSA-G40.21-M or its US equivalent.  Clauses 10.4.2 to 10.4.7 shall apply.

10.5.8	Analysis - General	Methods of Analysis shall be as specified in Section 5, and in this Section.
10.8.1.1	Slenderness	The slenderness ratio of a tension member shall not exceed 200. Criterion does not apply to the stay bars.
10.13.5	Diaphragms, Cross-Frames, and Lateral Bracing	Longitudinal girders shall be connected at each support by diaphragms designed to prevent twisting of the girders.
10.14.2.1	Built-up Members - General	Components shall be connected by solid plates.
10.14.2.2	Tie Plates	The separate components of tension members composed of shapes shall be connected by tie plates.
10.14.3.2	Chord Bracing	Use of lateral bracing shallower than the chords is not permitted.
10.16.2.1	Orthotropic Decks - Ribs	The effective width of deck plate acting as the top flange of a longitudinal rib shall be calculated in accordance with clause 5.8.2.2.1.
10.16.2.2	Orthotropic Decks - Effective Width of Deck	The effective width of deck acting as the top flange of a longitudinal superstructure component or transverse beam shall be calculated in accordance with clause 5.8.2.2.2.
10.17.3.2.1	Connection to Transverse Elements	The connection of diaphragms, including internal diaphragms, cross-frames, lateral bracing, floor beams, and the like, to main members shall be made using transverse connection plates that are welded or bolted to both the tension and compression flanges of the main member.
10.18.2.2	Bolted Joints in Shear	Bolted joints required to resist shear between the connected parts shall be designed as slip-critical connections.

10.18.2.2.1	Slip Resistance at the Serviceability Limit States	The slip coefficient $k_s$ shall be determined from Table 10.18.2.2.
10.18.4.12	Fillers	Fillers shall not consist of more than two plates.
10.23.4.6	Tack Welds and Temporary Welds	Temporary welds shall not be used on fracture-critical, primary tension, and flange material in compression.
10.23.5.3	Approval for Noncritical Repairs	Procedures shall be submitted to the Developer for approval.
10.23.5.4	Approval for Critical Repairs	Procedures shall be submitted to the Developer for approval.
<b><u>SECTION 11 - JOINTS AND BEARINGS</u></b>		
11.5.3.1.2	Open Deck Joint	Openings in excess of 60 mm are not permitted.
11.5.3.2.3	Joint Anchorage	Joint anchorage within elastomeric concrete is not permitted.
11.5.9	Volume Control Joint	The use of proprietary volume control joints is not permitted.
11.6.9	Other Bearing Systems	Bearing systems made from components not covered by clauses 11.6.2 through 11.6.8 shall not be used.
<b><u>SECTION 12 - BARRIERS AND HIGHWAY ACCESSORY SUPPORTS</u></b>		
12.5.2.1	Performance Level	The performance level shall be PL-2. The GNWT is to investigate the use of a higher barrier (PL-3)
12.5.2.1.1	Alternate Performance Levels	Alternate performance levels are not permitted.

<b><u>SECTION 13 - MOVABLE BRIDGES</u></b>
not applicable
<b><u>SECTION 14 - EVALUATION</u></b>
not applicable
<b><u>SECTION 15 - REHABILITATION</u></b>
not applicable
<b><u>SECTION 15 - FIBRE-REINFORCED STRUCTURES</u></b>
not applicable

**Definitions:**

**Engineer of Record (EOR)** – is the **Designer** as defined in the Concession Agreement and is the Person approved by GNWT to enter into the Design Agreement and to perform the Design work thereunder.

**Developer** – as defined in the Concession Agreement, means the Person approved by GNWT to enter into the Development Agreement and to perform the Development Work thereunder.

## SCHEDULE 11

### TOLL SYSTEM PROTOCOL, SUPPLY AND MANAGEMENT AGREEMENT

Between:

**The Minister of Transportation, on behalf of  
the Government of the Northwest Territories (the "GNWT")**

- and -

**The Deh Cho Bridge Corporation Ltd. ("the Project Company")**

Preamble:

Under the authority of the *Deh Cho Bridge Act*, the GNWT may, in accordance with the regulations, charge tolls for vehicular use of the Deh Cho Bridge.

This Agreement sets out the terms and conditions upon which the toll system will be designed, supplied, installed, operated, maintained and managed by the GNWT. This Agreement also documents the parties' understanding as to the setting of the **Base Toll Rate**, the time of the commencement of tolling, and the setting of any **Revised Toll Rate**.

The Parties Agree as Follows:

1. Tolls shall be charged to all "commercial vehicles" (as defined in the *Motor Vehicles Act*) with a minimum register Gross Vehicle Weight (GVW) of 4000 Kilograms (kg).
2. Toll rates shall be based on vehicle configuration in three categories as follows:
  - i) Straight Truck: 2 or 3 axles
  - ii) Tractor-Trailer: 4 to 6 axles
  - iii) Tractor-Train: 7 or more axles.
3. The toll rate for a Straight Truck shall be 25% of the toll rate of a Tractor-Train and the toll rate of a Tractor-Trailer shall be 60% of the toll rate of a Tractor-Train.
4. The **Base Toll Rate** and **Revised Toll Rate** shall be established using an agreed upon formula as contained in the financial model used to determine the GNWT's **Base Contribution** under the Deh Cho Bridge Project Concession Agreement dated September 28, 2007 (the "Concession Agreement").



5. The **Base Toll Rate** for a Tractor-Train shall be set by multiplying \$6.00 by a fraction having as the numerator the CPI in the year Traffic Availability Date is achieved and having as the denominator the CPI in the year 2002 and then multiplying this product by 38.49.

6. The GNWT shall commence charging tolls on the **Traffic Availability Date**.

7. Toll rates shall be adjusted annually in accordance with the increase or decrease in the **Canada CPI**. The adjustment shall be calculated on the first day of each calendar year following the **Traffic Availability Date** and come into effect 100 days thereafter.

8. The GNWT shall count and classify every commercial vehicle that is subject to a toll for using the **Facility**. The Count and Classification System shall operate continuously and reliably, shall be located on or very near the bridge site, and shall be independent of the toll collection process. **Gross Toll Revenues** shall be aggregated from the data collected by the Count and Classification System.

9. The Count and Classification System shall initially consist of the following:

- Two independent multiple loop device systems will be placed on either end of the bridge and as close to the bridge as possible. One system will be hooked up to the bridge power source and the other system to batteries;
- A video imaging system consisting of overhead and side mounted cameras will be installed. This system will be located on a gantry on the bridge and tied into the bridge power source and the communication link; and
- A dedicated, continuous communication link will be established to allow for the display of current traffic information and the monitoring of the system.

10. The Project Company shall have full access to the Count and Classification data.

11. It is anticipated that technological improvements to the Count and Classification System will be available in the future. Unless the parties agree that change is more urgently required, the GNWT shall notify the Project Company three (3) months prior to affecting a change to the Count and Classification System.

12. The GNWT shall perform the following tasks at the stated intervals:

- Review count and classification data from devices – daily;

- Reconcile count and classification data with toll collection data – daily;
- Prepare Project Company settlements, to include reports on **Gross Toll Revenues, Gross Ancillary Revenues, Net Ancillary Revenues** and Traffic Volumes – monthly;
- Prepare Annual Reconciliation Reports,
- Review and analyze the Project Company's questions about settlements;
- Audit and validate count and classify devices – twice per year;
- Monitor the process; and
- Respond to problems.

13. A "bus" as defined in the *Motor Vehicles Act* is exempt from the requirement to pay tolls, unless its primary cargo is goods rather than passengers. For greater certainty, GNWT vehicles and Emergency vehicles are exempt as public service vehicles from the requirement to pay tolls.

14. Terms in **bold** not otherwise defined in this Agreement have the meaning ascribed to them in the Concession Agreement.

Agreed to this \_\_\_\_ day of February, 2008.

**THE MINISTER OF TRANSPORTATION ON  
BEHALF OF THE GOVERNMENT OF THE  
NORTHWEST TERRITORIES AND ON  
BEHALF OF THE COMMISSIONER OF THE  
NORTHWEST TERRITORIES**

Per: \_\_\_\_\_  
The Honourable Norman Yakeleya

**DEH CHO BRIDGE CORPORATION LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:  
I/We have the authority to bind the corporation

DEH CHO BRIDGE CORPORATION LTD.

Schedule 12 - Final

Schedule 12 – Insurance and Bonding

Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Property Builders' Risk "All Risk"</i>	A Limit of Liability equal to the estimated completed project value of CAD \$133,000,000 hard costs plus Delayed Startup – 12 months Indemnity Period \$4,000,000 Soft Costs - \$8,750,000 Extra Expense/Expe diting Expense - \$10,000,000 Valuable Papers limit \$1,000,000 Professional Fees/Trustees Fees -	Flood \$250,000 Earthquake 3% of TIV subject to a \$250,000 minimum All other Losses \$250,000 including during Testing and Commissioning 30 days waiting period applicable to Delay in Start- up 48 Hours waiting period applicable to service interruption	<input type="checkbox"/> Data/Cyber <input type="checkbox"/> Excludes faulty work material, construction or design, but will include resultant damages to DE4 standard <input type="checkbox"/> War <input type="checkbox"/> Terrorism <input type="checkbox"/> Nuclear	All Risks Builders' Risk insurance covering the full insurable replacement cost of the construction project and including hot testing and commissioning, delay in start-up, soft costs, extra expense and expediting expense coverage and no early occupancy restriction. Such insurance will extend coverage to include Coffe Dams, Inland Transportation and Off Premises coverage.	Property Damage, Delayed Startup, Soft Costs, Extra Expense/Expediting Expense and all other extensions \$772,717



Deh Cho Bridge Corporation Ltd. Insurance Schedule

*DEH CHO BRIDGE CORPORATION LTD.*  
Schedule 12 - Final

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
	\$1,000,000				
	Fire Fighting Expenses - \$1,000,000				
	Off Site Storage - \$5,000,000				
	Contingent Business Interruption - \$10,000,000				
	Debris Removal - \$10,000,000				
<i>Comments</i>	<p> <input type="checkbox"/> Named Insured includes Deh Cho Bridge Corporation Ltd. PO Box 299 Ft. Providence, NT, X0E 0L0, The Minister of Transportation on behalf of The Government of Northwest Territories and The Commissioner of The Northwest Territories P.O. Box 1320, Yellowknife, NT X1A 2L9 Attention: Director Transportation Planning (per Concession Agreement), their officers and directors and any contractors, subcontractors, engineers and consultants and their affiliates directly employed to perform work for this project, and others with whom there is a contractual obligation to insure </p> <p> <input type="checkbox"/> The Toronto-Dominion Bank 66 Wellington Street West, 6<sup>th</sup> Floor, TD Tower, Toronto, Ontario, M5K 1A2 in its capacity as swap counterparty under a reinvestment interest rate swap and as IC lender under the Ineligible Cost Overrun Facility and BNY Trust Company of Canada- Suite 1101, 4 King Street West, Toronto, M5H 1B6 acting as trustee for bondholders and each of them as Loss Payee and Mortgagee </p> <p> <input type="checkbox"/> and others with whom there is a contractual obligation to insure as additional insured entities </p> <p> <input type="checkbox"/> 90 days notice of cancellation </p> <p> Extensions of Coverage: </p> <p> <input type="checkbox"/> Frost/Freezing to Concrete </p> <p> <input type="checkbox"/> Dewatering </p>				

DEH CHO BRIDGE CORPORATION LTD.  
Schedule 12 - Final

<b>TYPE</b>	<b>AMOUNT</b>	<b>DEDUCTIBLES</b>	<b>PRINCIPAL EXCLUSIONS</b>	<b>PRINCIPAL COVER</b>	<b>ESTIMATED TERM PREMIUM</b>
	<input type="checkbox"/> Fire Fighting Expense <input type="checkbox"/> Debris Removal <input type="checkbox"/> Bylaws <input type="checkbox"/> Replacement Cost <input type="checkbox"/> Permission to Occupy <input type="checkbox"/> Margin of Profit <input type="checkbox"/> Policy duration : December 31, 2007 to November 30, 2010 (actual work on bridge from June 2008 to August 2010) <input type="checkbox"/>				

**DEH CHO BRIDGE CORPORATION LTD.**  
Schedule 12 - Final

Schedule 12 – Insurance and Bonding

Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Wrap-up Liability</i>	\$10,000,000 Minimum Term: December 31, 2007 to November 30, 2010 (actual work on bridge from June 2008 to November 2010)	\$10,000	<input type="checkbox"/> Injury to employees in course of employment (insured elsewhere via workers' compensation) <input type="checkbox"/> Property in the Insured's care custody or control <input type="checkbox"/> Use of motor vehicles (other than tools of trade unlicensed units) <input type="checkbox"/> Damage to the project except during completed operations <input type="checkbox"/> Cyber Perils <input type="checkbox"/> War <input type="checkbox"/> Terrorism <input type="checkbox"/> Nuclear	Wrap-up Liability insurance covering all construction operations on an occurrence basis against claims for personal injury (including bodily injury and death), property damage (including loss of use), and including Completed Operations Liability insurance for a period of no less than 24 months.  Professional Liability – coverage for professional services integral to the operations of the Insured	Total Term Premium \$247,211

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TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Comments</i>					
				<ul style="list-style-type: none"> <li>□ Named Insured Deh Cho Bridge Corporation Ltd. PO Box 299 Ft. Providence, NT, X0E 0L0</li> <li>□ Additional Named Insured includes, The Minister of Transportation on behalf of The Government of Northwest Territories and The Commissioner of The Northwest Territories P.O. Box 1320, Yellowknife, NT X1A 2L9 Attention: Director Transportation Planning (per Concession Agreement), their officers and directors and any contractors, subcontractors, engineers and consultants and their affiliates directly employed to perform work for this project, and others with whom there is a contractual obligation to insure and</li> <li>□ The Toronto Dominion-Dominion Bank, 66 Wellington Street west, 6<sup>th</sup> Floor, TD Tower, Toronto, Ontario, M5K 1A2 in its capacity as swap counterparty under a reinvestment interest rate swap and as IC lender under the Ineligible Cost Overrun Facility and</li> <li>□ BNY Trust Company of Canada- Suite 1101, 4 King Street West, Toronto, M5H 1B6 acting as trustee for bondholders and</li> <li>□ others with whom there is a contractual obligation to insure as additional insured entities</li> <li>□ Estimated premiums based on a total final completed hard construction cost of CAD \$133,000,000 million for an estimated construction duration of December 31, 2007 to November 30, 2010</li> </ul>	
				<ul style="list-style-type: none"> <li>□ 24 months completed operations subject to aggregate policy limit</li> <li>□ Unlicensed Equipment</li> <li>□ Watercraft up to 500 tons</li> <li>□ Broad Form Property Damage</li> <li>□ Broad Form Completed Operations</li> <li>□ Notice of Claim</li> <li>□ 60 days notice of cancellation</li> <li>□ Non-owned Automobile – subject to sublimit of \$10,000,000</li> <li>□ Tenants' Legal Liability (All Risks) – subject to sublimit of \$10,000,000</li> <li>□ Medical Expenses – subject to sublimit of \$10,000 per person</li> <li>□ Forest Fire Fighting Expenses – subject to sub-limit of \$2,000,000</li> <li>□ Policy period December 31, 2007 to November 30, 2010</li> <li>□</li> </ul>	

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Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	LIMITS OF LIABILITY	DEDUCTIBLE	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Project Specific Professional Liability as per Encon Engineers Liability Form L80100</i>	\$10,000,000 - Per claim and in the policy aggregate - Inclusive of defense and all other costs	\$100,000 Not applicable to defense and other costs	<input type="checkbox"/> Penalties, fines or liquidated and ascertained damages <input type="checkbox"/> Related Entity Claims <input type="checkbox"/> The Insured's insolvency or bankruptcy or the Insured's undergoing receivership or liquidation <input type="checkbox"/> The Insured's failure to complete or act upon drawings, plans, specification, schedules or shop drawings on time, unless such failure is the result of an error or inaccuracy in the preparation of these documents <input type="checkbox"/> The liability of others assumed by the Insured under contract or agreement, except to the extent that the Insured would otherwise have been liable for any errors, omissions or negligent acts of the Insured's own employees or sub-consultants <input type="checkbox"/> Express warranties or guarantees, which the Insured has given <input type="checkbox"/> Estimates of profit, return on capital, economic return, or estimates giving rise to forecasts of economic return	Project-specific in connection with the design and construction of the project from beginning of first design, through the construction period and including a maintenance period.	\$675,000  Subject to adjustment on actual professional fees for the project.



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TYPE	LIMITS OF LIABILITY	DEDUCTIBLE	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
			<ul style="list-style-type: none"> <li>□ Nuclear Liability exclusion</li> <li>□ The performance of services not usual or customary for professional architects or engineers (requires insurer's agreement if coverage required for other types of professionals)</li> <li>□ Advising or requiring insurance, suretyship or bonds</li> <li>□ Faulty workmanship, construction or work which is alleged to have been or in fact has not been constructed in accordance with the design of the project facilities or the construction documents unless such claim arises solely out of the Insured's provision of field services in the Insured's capacity as an architect or engineer</li> <li>□ The design or manufacture of any goods or products sold or supplied by the Insured(s) or designed, manufactured, sold or supplied by others under license from the Insureds.</li> </ul>		



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Schedule 12 – Insurance and Bonding

Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Engineers' Professional Liability</i>					
<i>Comments</i>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Encon Form L80100</li> <li><input type="checkbox"/> Named Insured – Independent engineering consultants specifically named on the policy per application form (application did not include Territorial Advisors)</li> <li><input type="checkbox"/> First Named Insured – Deh Cho Bridge Corporation Ltd. DCBC would not be an Insured; they will only have administrative control (i.e., notice of cancellation and payment and return of premium)</li> <li><input type="checkbox"/> Premium indications are for a six (6) year policy period, inclusive of construction and maintenance.</li> <li><input type="checkbox"/> Retroactive Date – none (i.e., no limitation)</li> <li><input type="checkbox"/> Estimated policy term premiums noted above are based on estimated total professional fees of CAD \$6,879,409.</li> <li><input type="checkbox"/> Premium indications are subject to premium adjustment at the agreed policy rate on the actual total professional fees for the project</li> <li><input type="checkbox"/> Coverage will only be provided for the design team's services performed for the following project: Deh Cho Bridge, NWT</li> <li><input type="checkbox"/> Premium indications are subject to the insurers receiving prior to "binding" the following: <ul style="list-style-type: none"> <li>– Original, completed and signed single project application, including Consultant Notification Forms for each applicant</li> <li>– Copy of the final contract for A&amp;E services</li> </ul> </li> <li><input type="checkbox"/> Policy to be non-cancelable by Insurer, except for material change in project size or concept.</li> </ul>				

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 Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	MAXIMUM DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Pollution Liability</i> <i>(single project</i> <i>Combined CPL/PLL</i> <i>cover</i>	\$10,000,000 per claim and in the aggregate	\$250,000 Self Insured Retention	<input type="checkbox"/> Radiation (covered to specific levels and then liability coverage falls within the Nuclear Insurance Act) <input type="checkbox"/> Material Change in use (unless agreed) <input type="checkbox"/> Data/Cyber Risks <input type="checkbox"/> War <input type="checkbox"/> Terrorism Fungus/Mould <input type="checkbox"/>	Pollution Liability insurance covering third party bodily injury and property damage liability, including clean-up costs subject to a \$2,000,000 limit for PLL Biological agents	\$182,518.00
1) Contractors Pollution Liability – Claims Made					
2) Commercial Pollution Legal Liability – Claims made					
Combined Limit subject to *Commercial Pollution Legal Liability with a \$2,000,000 sublimit					



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*Comments*

- ☐ Named Insured Deh Cho Bridge Corporation Ltd PO Box 299 Ft. Providence, NT, X0E 0L0.
- ☐ Additional Named Insured includes, The Minister of Transportation on behalf of The Government of Northwest Territories and The Commissioner of The Northwest Territories P.O. Box 1320, Yellowknife, NT X1A 2L9 Attention: Director Transportation Planning (per Concession Agreement), their officers and directors and any contractors, subcontractors, engineers and consultants and their affiliates directly employed to perform work for this project, and others with whom there is a contractual obligation to insure and
- ☐ The Toronto Dominion-Dominion Bank, 66 Wellington Street west, 6<sup>th</sup> Floor, TD Tower, Toronto, Ontario, M5K 1A2 in its capacity as swap counterparty under a reinvestment interest rate swap and as IC lender under the Ineligible Cost Overrun Facility and
- ☐ BNY Trust Company of Canada- Suite 1101, 4 King Street West, Toronto, M5H 1B6 acting as trustee for bondholders and
- ☐ others with whom there is a contractual obligation to insure as additional insured entities

Note "Contractors Pollution Liability" covers third party on-site and off-site BI/PD and clean up.

Commercial Pollution Legal Liability covers:

- ☐ On site clean up of pre existing conditions
- ☐ On site clean up of new conditions

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DEH CHO BRIDGE CORPORATION LTD.

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Schedule 12 – Insurance and Bonding

Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	MAXIMUM DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED ANNUAL PREMIUM
<i>*Directors' and Officers' Legal Liability and Corporate Indemnification Insurance</i>	\$10,000,000	\$100,000		Directors' and Officers' Legal Liability and Corporate Indemnification insurance, providing wrongful acts protection to the directors and officers of DCBC	\$20,000
<i>*Automobile Liability</i>	\$2,000,000 (Minimum)	\$10,000	<input type="checkbox"/> Standard NWT Owners' Form	Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any automobile used in connection with the construction of project on behalf of the consortium.	To be provided by Contractor
<i>*Aircraft Liability (if applicable)</i>	\$10,000,000	\$100,000		Aircraft Liability coverage (including owned and non-owned) when aircraft are used in the performance of the project or the operations. DCBC/GNWT as	To be provided by Contractor



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			additional insured	
*Watercraft Liability (if applicable)	\$10,000,000	\$10,000	Watercraft Liability coverage (including owned and non-owned) when watercraft are used in the performance of the project. DCBC/GNWT as additional insured	To be provided by Contractor
*Comments:	Cancellation:	90 days notice		



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Schedule 12 – Insurance and Bonding  
Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
Marine Cargo Insurance (if applicable)	Value of Shipment plus Extra Expense	\$100,000		Marine Cargo insurance on a world-to-world basis, insuring equipment and materials to be installed during the execution of the project against loss or damage from customary "all risk" marine perils (including war, strikes, riots, and civil commotion while in transit).  Coverage to include protection for business interruption in the form of Advance Loss of Profits insurance.  DCBC as Additional Insured  Lender as Mortgagee and Loss Payee	\$unknown but likely to be at a rate of 25 cents per \$100 of exposure

\*Comments: Cancellation 90 days notice



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Schedule 12 – Insurance and Bonding

Prior to Final Completion Certificate (Insurances of Project Co.)

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATE TERM PREM
Contract Security	Contractor shall provide an irrevocable Letter of Credit in a form acceptable to the Corporation in the amount of 10% of the Contract Amount	NIL		The Letter of Credit is to guarantee performance of the Construction Contract, and completion of the Project in the event of a default of the General Contractor or any of its sub-contractors	To be provided Contractor
				-	
				-	

Comments: Letter of Credit to be provided within 30 days of signing of contract.

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Schedule 12 – Insurance  
Operational Insurance of Project Co.

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED ANNUAL PREMIUM
Commercial General Liability Insurance	\$25,000,000	\$25,000	<input type="checkbox"/> Asbestos <input type="checkbox"/> Data/Cyber <input type="checkbox"/> Clinical Services as defined in the Project Agreement <input type="checkbox"/> War <input type="checkbox"/> Terrorism <input type="checkbox"/> Nuclear	Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), property damage (including loss of use), and including Products and Completed Operation Liability insurance	\$125,000

**Comments**

- ☐ Named Insured Deh Cho Bridge Corporation Ltd. PO Box 299 Ft. Providence, NT, X0E 0L0
- ☐ Named Insured includes, The Minister of Transportation on behalf of The Government of Northwest Territories and The Commissioner of The Northwest Territories P.O. Box 1320, Yellowknife, NT X1A 2L9 Attention: Director Transportation Planning (per Concession Agreement), their officers and directors and any contractors, subcontractors, engineers and consultants and their affiliates directly employed to perform work for this project, and others with whom there is a contractual obligation to insure and
- ☐ The Toronto Dominion-Dominion Bank, 66 Wellington Street west, 6<sup>th</sup> Floor, TD Tower, Toronto, Ontario, M5K 1A2 in its capacity as swap counterparty under a reinvestment interest rate swap and as IC lender under the Ineligible Cost Overrun Facility and
- ☐ BNY Trust Company of Canada- Suite 1101, 4 King Street West, Toronto, M5H 1B6 acting as trustee for bondholders and
- ☐ others with whom there is a contractual obligation to insure as additional insured entities

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☐ Cancellation: 60 days notice

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Schedule 12 – Insurance  
Operational Insurance of Project Co.

TYPE	AMOUNT	MAXIMUM DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED ANNUAL PREMIUM
<i>Property Insurance</i>	\$133,000 - Full replacement cost \$4,000,000 - Business Interruption (Gross Income) – 12 months period of indemnity Extra Expense – \$10,000,000.	Property and Flood \$500,000 Earthquake 5% of the value of the property at the location subject to \$100,000 Minimum 10 Day Waiting Period for Gross Profits	<input type="checkbox"/> Data/Cyber <input type="checkbox"/> War <input type="checkbox"/> Terrorism <input type="checkbox"/> Nuclear	All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured and including necessary business interruption and expediting expenses.  Such insurance will extend coverage to include Inland Transportation and Off Premises coverage.	\$139,650 Property Damage Business Interruption (Gross Profits) Included

*Comments*

☐ Named Insured Deh Cho Bridge Corporation Ltd. PO Box 299 Ft. Providence, NT, X0E 0L0  
0 Additional Named Insured includes The Minister of Transportation on behalf of The Government of Northwest Territories and The Commissioner of The Northwest Territories P.O. Box 1320, Yellowknife, NT X1A 2L9 Attention: Director Transportation Planning (per Concession Agreement), their officers and directors and any contractors, subcontractors, engineers and consultants and their affiliates directly employed to perform work for this project, and others with whom there is a contractual obligation to insure  
The Toronto-Dominion Bank 66 Wellington Street West, 6<sup>th</sup> Floor, TD Tower, Toronto, Ontario, M5K 1A2 in its capacity as swap counterparty under a reinvestment interest rate swap and as IC lender under the Ineligible Cost Overrun Facility and BNY Trust Company of Canada- Suite 1101, 4 King Street West, Toronto, M5H 1B6 acting as trustee for bondholders and each of them as Loss Payee and Mortgagee

*DEH CHO BRIDGE CORPORATION LTD.*  
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Cancellation: 90 days notice

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Schedule 12 – Insurance  
Operational Insurance of Project Co.

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED ANNUAL PREMIUM
<i>Automobile Liability</i>	\$2,000,000	\$10,000	<input type="checkbox"/> Standard • Owners Form	Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any automobile	unknown
<i>Aircraft Liability</i> (if applicable)	\$10,000,000	\$100,000		Aircraft Liability coverage (including owned and non-owned extended to include airport premises) when aircraft are used in the operations DCBC/GNWT as additional insured Lender as Additional Insured if required	unknown
<i>Watercraft Liability</i>	\$10,000,000	\$10,000		Watercraft Liability coverage (including owned and non-owned) when watercraft are used in the operations DCBC/GNWT as additional insured Lender as Additional	unknown

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			Insured if required	
Directors' and Officers' Legal Liability and Corporate Indemnification Insurance	\$10,000,000	\$100,000	Directors' and Officers' Legal Liability and Corporate Indemnification insurance, providing wrongful acts protection to the directors and officers of the DCBC	\$



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Schedule 12 - Insurance  
Operational Insurance of Project Co.

TYPE	AMOUNT	DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED TERM PREMIUM
<i>Employee Dishonesty (Crime) Insurance</i>	Minimum \$1,000,000	\$10,000	<input type="checkbox"/> Data/Cyber <input type="checkbox"/> War <input type="checkbox"/> Terrorism <input type="checkbox"/> Nuclear	Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co., including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery  Custodial endorsement extending protection to third parties	
<i>Comments:</i> Cancellation: 90 days notice <input type="checkbox"/>					



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Schedule 12 – Insurance  
Operational Insurance of Project Co.

TYPE	AMOUNT	MAXIMUM DEDUCTIBLES	PRINCIPAL EXCLUSIONS	PRINCIPAL COVER	ESTIMATED ANNUAL PREMIUM
-Commercial Pollution Legal Liability – Claims Made Form	\$10,000,000 Minimum  Per incident and aggregate except with respect to Mould subject to a sublimit of \$10,000,000 per occurrence and aggregate	\$250,000	<input type="checkbox"/> Radiation (covered to specific levels and then liability coverage falls within the Nuclear Insurance Act), Asbestos (unless agreed) <input type="checkbox"/> Lead Paint (unless agreed) <input type="checkbox"/> Biological Agents – e.g. Anthrax <input type="checkbox"/> Change in Use (unless agreed) <input type="checkbox"/> War <input type="checkbox"/> Terrorism	1)"On site" clean up of pollution conditions 2)"Legal Liability" for pollution conditions 3)"Emergency Response Costs" for \$250,000 sublimit	\$98,811 for three (3) year term

**Comments:**

- ☐ Named Insured Deh Cho Bridge Corporation Ltd. PO Box 299 Ft. Providence, NT, X0E 0L0
- ☐ Additional Named Insured includes., The Minister of Transportation on behalf of The Government of Northwest Territories and The Commissioner of The Northwest Territories P.O. Box 1320, Yellowknife, NT X1A 2L9 Attention: Director Transportation Planning (per Concession Agreement), their officers and directors and any contractors, subcontractors, engineers and consultants and their affiliates directly employed to perform work for this project, and others with whom there is a contractual obligation to insure and
- ☐ The Toronto Dominion-Dominion Bank, 66 Wellington Street west, 6<sup>th</sup> Floor, TD Tower, Toronto, Ontario, M5K 1A2 in its capacity as swap counterparty under a reinvestment interest rate swap and as IC lender under the Ineligible Cost Overrun Facility and BNY Trust Company of Canada- Suite 1101, 4 King Street West, Toronto, M5H 1B6 acting as trustee for bondholders and
- ☐ others with whom there is a contractual obligation to insure as additional insured entities
- ☐ Cancellation: 90 days notice

## **SCHEDULE 13**

### **PROJECT MANAGEMENT BOARD AND PRE-FUNDED CONTINGENCY AMOUNT**

#### **1. ESTABLISHMENT AND ROLE OF PMB**

##### **1.1 Establishment**

- (a) The parties shall, within 30 days after the date of this Concession Agreement, establish the PMB of two members consisting of:
  - (i) one representative of GNWT; and
  - (ii) one representative of the Project Company.
- (b) Members of the PMB may, on prior notice to all members, invite such advisors and consultants as they require from time to time to attend meetings and provide briefings to the PMB.
- (c) All decisions, approvals and determinations of the PMB shall be by unanimous vote and for greater certainty, shall not be subject to the dispute resolution procedures in Article 24 of the Agreement.

##### **1.2 Function and Role**

Subject to the limitations set out in paragraph 1.3, the PMB is responsible for oversight of the Development Work, Design Work and Construction Work, including:

- (a) supervision of the overall development, design and construction of the Facility;
- (b) management of and draws/advances under the Pre-Funded Contingency Amount;
- (c) review of the audit activities of the Independent Engineer (the "IE");
- (d) approval of Project Company Change Requests;
- (e) determination of Cost Overruns as Eligible Cost Overruns or Ineligible Cost Overruns and for greater certainty, if there is no unanimous determination by the members of the PMB that a Cost Overrun is an Eligible Cost Overrun, the Cost Overrun shall be treated as if it were an Ineligible Cost Overrun; and
- (f) consideration of the impact of events occurring during the term of the Concession Agreement and review of the Project Company's response to such events.

##### **1.3 Authority of the PMB**

Notwithstanding anything to the contrary in this Schedule, the authority of the PMB shall be limited as follows:

- (a) If the matter to be considered by the PMB will not result in a Cost Overrun which taken together with all other Eligible Cost Overruns will be in excess of the Pre-Funded Contingency Amount, the decision of the PMB shall be binding upon the parties; and
- (b) If the matter to be considered by the PMB
  - (i) will or may result in:
    - (A) a Cost Overrun which taken together with all other Eligible Cost Overruns will be in excess of the Pre-Funded Contingency Amount; or
    - (B) a Project Company Event of Default, or
  - (ii) would, with the giving of notice or the passage of time or both, result in a Project Company Event of Default,

then the matter shall be determined solely by GNWT.

## **2. INDEPENDENT ENGINEER**

### **2.1 Role of the Independent Engineer**

- (a) The PMB will be supported by the IE who will report to the PMB on a monthly basis (the "IE Report") regarding:
  - (i) costs incurred;
  - (ii) contemplated Project Company Change Requests;
  - (iii) events occurring during the preceding month that have, or could reasonably be expected to have, an impact on the cost to complete the Facility; and
  - (iv) adherence to project schedule, milestones achieved and delays.
- (b) Any Project Company Change Request issued by the Project Company without the prior approval of the PMB (if such matter is within the authority of the PMB pursuant to this Schedule 13) or, without the required Approval of GNWT, as the case may be, will be at the sole risk of the Project Company. To the extent the monthly report of the IE indicates that the remaining cost to complete the Project would be increased, the PMB will meet to determine the appropriate course of action.
- (c) In order to ensure the quality of the Facility, the IE shall perform a range of quality audit activities and report on the same to the PMB. The PMB shall then determine if the QA/QC process being undertaken by the Project Company is effective.
- (d) The IE shall issue a detailed report on the remaining cost to complete the Facility which would be used to govern payments to the Developer, the Designer, the Constructor, and the Project Company.
- (e) The IE shall perform such other activities as directed by the PMB.

## **2.2 Scope of IE Report**

- (a) The IE Report shall be issued on a monthly basis within five days of month end. The IE Report shall, in addition to the matters set out in paragraph 2.1, address:
  - (i) Project Costs:
    - (A) cost to complete (previous period)
    - (B) cost to complete (current period)
    - (C) costs incurred during period
    - (D) balance/unadvanced portion of amounts in Construction Account and balance/unadvanced portion of Pre-Funded Contingency Amount.
    - (E) Project Company Change Requests submitted for approval.
    - (F) Views on Project Company Change Requests submitted for approval.
    - (G) Summary of events occurring during period.
    - (H) Views on summary of events occurring during period.
  - (ii) Urgent Project Company Change Requests.
    - (A) Report within three days.
  - (iii) Urgent Events Occurring:
    - (A) Report within three days.
    - (B) Emergency Project Company Change Requests.
  - (iv) Quality Audit:
    - (A) Report of quality audit findings during month.

The monthly reports must also offer analyses of the life cycle cost implications of the above.

## **3.1 Procedures and Practices**

- (a) The members of the PMB may:
  - (i) adopt such procedures and practices for the conduct of the activities of the PMB and establish such subcommittees of the PMB, as they consider appropriate from time to time;
  - (ii) invite to any meeting of the PMB such other persons as the members of the PMB may agree;

- (iii) exclude from any meeting of the PMB such persons as the members of the PMB may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the PMB.
- (b) Once established, the PMB shall meet at least once each month from the date of this Concession Agreement until the expiry of the Term, unless otherwise agreed by the members of the PMB or the parties.
- (c) Either party may convene a special meeting of the PMB at any time. Special meetings of the PMB may be convened on not less than 5 Business Days notice to all members of the PMB, identifying the agenda items to be discussed at the special meeting, provided that, in an emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the PMB, the PMB shall meet at the Facility or a location in Yellowknife, Northwest Territories. Meetings of the PMB may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the PMB must attend in person at least once each calendar quarter.
- (e) Minutes of all meetings, recommendations and decisions of the PMB, including those made by telephone or other form of communication, shall be recorded and maintained by the Project Company. The Project Company shall circulate copies of such minutes within 5 Business Days of the holding of the meeting. Unless GNWT notifies the Project Company within 5 Business Days of receipt of the minutes that GNWT disagrees with the contents of the minutes, the Project Company and GNWT shall be deemed to have approved such minutes. The Project Company shall maintain a complete set of all minutes of the meetings of the PMB and shall make such minutes available for inspection by GNWT during regular business hours.

#### **4. PRE-FUNDED CONTINGENCY AMOUNT**

- (a) The portion of the Debt comprising the Pre-Funded Contingency Amount will only be drawn upon or otherwise utilized to pay for and fund Eligible Cost Overruns as determined or approved by the PMB (or Approved by GNWT, if applicable).
- (b) If following 12 months after the Total Completion of the Facility, there is any remaining unadvanced amount of the Pre-Funded Contingency Amount which is not then otherwise required to fund Eligible Cost Overruns as previously determined or approved by the PMB (or Approved by GNWT, as applicable), then such remaining unadvanced amount shall be drawn upon and paid as follows:
- (i) as to  $\frac{1}{3}$ , to GNWT;
  - (ii) as to  $\frac{1}{3}$ , to the Project Company;

- (iii) as to 1/3, to a rehabilitation fund to be created jointly by the Project Company and GNWT to fund the costs of unanticipated repairs to the Facility as Approved by GNWT (which costs are not otherwise the responsibility or liability of the Developer, the Designer, the Constructor or the Operator under or pursuant to the Development Agreement, the Design Agreement, the Construction Agreement or the OMM Agreement or of the Project Company pursuant to a Default or Event of Default hereunder) with any interest earned thereon to be deposited into the fund and with any disbursements from the fund to be recommended by the Project Company and Approved by GNWT and for greater certainty, upon the expiration or earlier termination of the Term, the fund and all amounts therein (if any) shall be the sole and exclusive property of GNWT.

## **5. CONCESSION AGREEMENT UNAMENDED**

### **5.1 Responsibilities Not Limited**

- (a) Nothing herein shall limit or otherwise abrogate from the covenants, agreements, representations, warranties, obligations and undertakings of the parties set out in Concession Agreement, each of which shall remain in full force and effect in accordance with their respective terms.