



RICHMOND • AIRPORT • VANCOUVER

**AMENDED AND RESTATED
RAV CONCESSION AGREEMENT**

For the Richmond • Airport • Vancouver Rapid Transit Project

RAV PROJECT MANAGEMENT LTD.

and

GREATER VANCOUVER TRANSPORTATION AUTHORITY

and

INTRANSIT BC LIMITED PARTNERSHIP

Dated: July 29, 2005

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**AMENDED AND RESTATED
RAV CONCESSION AGREEMENT**

THIS AGREEMENT made as of July 29, 2005

AMONG:

RAV PROJECT MANAGEMENT LTD.

("RAVCO")

AND:

GREATER VANCOUVER TRANSPORTATION AUTHORITY

("GVTA")

AND:

**INTRANSIT BC LIMITED PARTNERSHIP, by its general partner INTRANSIT
BRITISH COLUMBIA GP LTD.**

("Concessionaire")

WHEREAS:

A. RAVCO, GVTA and the Concessionaire have entered into a Concession Agreement dated March 29, 2005 (as amended by Amending Agreements dated April 29, 2005 and May 19, 2005) for the design, construction, finance, testing, commissioning, operation and maintenance of the System;

B. GVTA is a party to this Agreement for the sole purpose of accepting joint and several liability for RAVCO Payment Obligations (as defined in this Agreement);

C. The parties wish to amend and restate the Concession Agreement on the terms and conditions set out in this Amended and Restated Concession Agreement.

IN CONSIDERATION of the covenants and agreements in this Agreement, RAVCO and the Concessionaire agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, including the recitals and Schedules hereto:

"Access Agreements" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Accessible" has the meaning given in Section 1 of Schedule 11 (Payments);

"Additional Real Property Interests" has the meaning given in Section 1 of Schedule 7 (Real Property Interest);

"Adjacent Structures" means every structure, building or utility in, on, under or affixed to adjacent to the Real Property Interests;

"Adjusted Estimated Market Value" means as at the Termination Payment Date, the Estimated Market Value:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (1) any Re-letting Costs; and
 - (2) any other liquidated amounts that RAVCO is entitled to set-off or deduct under this Agreement,
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (1) any Insurance Proceeds and Insurance Receivables;
 - (2) any accrued but unpaid amounts owing and payable by RAVCO to the Concessionaire under this Agreement; and
 - (3) all credit balances on any bank account held by the Concessionaire on the date the Estimated Fair Value is calculated,

to the extent that any of the above amounts have not been included in calculating the Estimated Fair Value and, in the case of (b)(1) and (b)(3) above, RAVCO has received such amounts in accordance with this Agreement;

"Adjusted for Inflation" means, for any amount at any time, that amount multiplied by the aggregate of:

- (a) multiplied by the Opco Proportion multiplied by $CPI\ Index_n$ divided by $CPI\ Index_0$;
- (b) multiplied by the Opco Proportion multiplied by Electric Index $_n$ divided by Electric Index $_0$;
- (c) multiplied by the Opco Proportion multiplied by Labour Index $_n$ divided by Labour Index $_0$;
- (d) multiplied by the Capital Proportion multiplied by Fixed Index $_n$;
- (e) multiplied by the Capital Proportion multiplied by $CPI\ Index_n$ divided by $CPI\ Index_0$; and
- (f) on and after July 1, 2035, an amount equal to the excess of the aggregate of (a) to (e) as of June 30, 2035 over the aggregate of (a) to (e) on July 1, 2035.

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where:

- (i) "Capital Proportion" is an amount equal to one minus the Opco Proportion applicable at that time;
- (ii) "CPI Inflation Index" applicable as at any date means an amount equal to the Consumer Price Index, for All-items in, British Columbia as at the first day of the third month prior to that date, as published by Statistics Canada (CANSIM code v736831) or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, and if such agreement cannot be reached, pursuant to the Dispute Resolution Procedure;
- (iii) "CPI Index_n" is the CPI Inflation Index applicable as at the first day of the most recent calendar quarter;
- (iv) "CPI Index₀" is the CPI Inflation Index applicable as at April 1, 2003;
- (v) "Electric Inflation Index" applicable as at any date means an amount equal to the Electric Power Selling Price Index (Non Residential) in British Columbia as at the first day of the third month prior to that date, as published by Statistics Canada (CANSIM code Table 329 - 0050) or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, and if such agreement cannot be reached, pursuant to the Dispute Resolution Procedure;
- (vi) "Electric Index_n" is the Electric Inflation Index applicable as at the first day of the most recent calendar quarter;
- (vii) "Electric Index₀" is the Electric Inflation Index applicable as at April 1, 2003;
- (viii) "Fixed Index_n" is 1.021 to the power of: the number of days elapsed since April 1, 2003 divided by 365.25;
- (ix) "Labour Inflation Index" applicable as at any date means the weighted average hourly rate paid by BC Rapid Transit Company to all unionized employees (or their equivalent from time to time) or, if such information is not available, such similar metric or index as may be agreed by the parties, acting reasonably, and if such agreement cannot be reached, pursuant to the Dispute Resolution Procedure;
- (x) "Labour Index_n" is the Labour Inflation Index applicable as at the first day of the most recent calendar quarter;
- (xi) "Labour Index₀" is the Labour Inflation Index applicable as at April 1, 2003; and
- (xii) "Opco Proportion" is on or before June 30, 2035, and , thereafter;

"Adjusted Highest Compliant Bid Price" means as at the Termination Date, the Highest Compliant Bid Price:

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- (a) less an amount, without duplication, equal to the aggregate of:
 - (1) any Re-letting Costs; and
 - (2) any other liquidated amounts that RAVCO is entitled to set-off or deduct under this Agreement;
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (1) any Insurance Proceeds and Insurance Receivables;
 - (2) any accrued but unpaid amounts owing and payable by RAVCO to the Concessionaire under this Agreement;
 - (3) all credit balances on any bank account held by the Concessionaire on the Termination Date,

to the extent that any of the above amounts has not been taken into account in the relevant Compliant Bid and, in the case of (b)(1) and (b)(3) above, RAVCO has received such amounts in accordance with this Agreement;

"Adjusted Service Plan" has the meaning given in Section 5.5 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Adjustment Date" has the meaning given in Section 21.4;

"Affiliate" in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where "control" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

"Agreement" means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time;

"Airport" means the Vancouver International Airport;

"Airport Connector" means the segment of the System commencing from the western end of the System on Sea Island to the Track junction with the Main Line, excluding Bridgeport Station;

"Airport Connector Only Ridership" has the meaning given in Section 1 of Schedule 11 (Payments);

"Airport Connector Payment Application" has the meaning given in Section 5.1(b) of Appendix I to Schedule 11 (Payments);

"Airport Connector Payment Certificate" has the meaning given in Section 6.1(b) of Appendix I to Schedule 11 (Payments);

"Airport Terminal Station" means the station on the Airport Connector located at the terminal of the Airport;

"Alignment" means the alignment of the System described in Schedule 6 (Proposal Extracts), as revised from time to time as permitted under this Agreement;

"Ancillary Activities" means, other than the Design, Construction, Operation and Maintenance of the System, such activities as are expressly permitted under this Agreement including the management, procurement, sale and maintenance of:

- (a) all third party advertising on the Main Line (but for greater certainty not at the Airport Connector Stations) and inside and outside the Vehicles;
- (b) all retail space at the Main Line Stations; and
- (d) a fee-based distribution of telecommunication services in underground sections and Stations of the System as permitted in Section 11.25.6 of Schedule 3 (Design and Construction Specifications);

and all activities incidental to the effective undertaking of such activities;

"Ancillary Activities Revenue" means revenue derived from Ancillary Activities;

"Annual Operation and Maintenance Plan" has the meaning given in Section 5.7 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Approved Advance Works Agreement" has the meaning given in Section 1 of Appendix I to Schedule 11 (Payments);

"Approved Project Schedule" has the meaning given in Section 7.4 of Schedule 2 (Design and Construction Requirements);

"Appurtenant Interests" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Appurtenant Interest Agreements" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Appurtenant Interest Contractors" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Archaeological Consultant" means the Person appointed by the Concessionaire pursuant to Section 11.2(a)(2) of Schedule 2 (Design and Construction Requirements);

"Arrival" has the meaning given in Section 1 of Schedule 11 (Payments);

"Arrival Credit" has the meaning given in Section 1 of Schedule 11 (Payments);

"As-Built Drawings and Specifications" has the meaning given in Section 12.12 of Schedule 2 (Design and Construction Requirements);

"Availability Payment" means the payments described in Section 5 of Schedule 11 (Payments);

"Available RAVCO Funds" has the meaning given in Section 3.1 of Appendix I to Schedule 11 (Payments);

"Avoidable Costs" means all costs and expenditures which are, or which if the Concessionaire acted reasonably would have been, avoided by the Concessionaire during any stoppage or reduction:

- (a) of the Work during the Construction Period; and
- (b) Operation and Maintenance Services during the Operating Period;

"Base Availability Payment" has the meaning given in Section 1 of Schedule 11 (Payments);

"Base Case Equity IRR" means the Concessionaire's Nominal after tax internal rate of return of all equity funding determined on a pro forma basis on the assumption that the Concessionaire is a fully taxable single purpose British Columbia corporation taking the maximum of all deductions permitted under Tax Laws and otherwise minimizing its tax payable;

"Base Case Project IRR" means the percentage shown in cell 'WACC 'IB49 of the worksheet entitled "WACC Calculation" in the Financial Model calculated at the Closing Date as if the Concessionaire were a fully taxable single purpose British Columbia corporation taking the maximum of all deductions permitted under Tax Laws and otherwise minimizing its tax payable;

"Base Level Demand" has the meaning given in Figure 2.4.2 of Schedule 3 (Design and Construction Specifications);

"Base Payment" has the meaning given in Section 1 of Schedule 11 (Payments);

"Base Quality Payment" has the meaning given in Section 1 of Schedule 11 (Payments);

"Base Volume Payment" has the meaning given in Section 1 of Schedule 11 (Payments);

"Baseline Ridership Forecast" means the report in respect of forecast ridership on the System attached as Appendix 3 to Schedule 3 (Design & Construction Specifications) as may be revised from time to time pursuant to Sections 4.2 and 4.3 of Schedule 11 (Payments);

"BCEAA" means the *Environmental Assessment Act* (British Columbia);

"BCSA" means the British Columbia Safety Authority;

"Beneficiary" has the meaning given in Section 12.4;

"Bridge" or **"Bridges"** means the bridges included in the System;

"Bridgeport Station" means the Station located between River Road and Charles Street in Richmond;

"British Columbia Building Code" or **"BCBC"** means the current edition from time to time of the British Columbia Building Code as adopted and amended by regulation pursuant to the *Local Government Act* (British Columbia);

"Building Codes" means all codes, laws, bylaws and regulations applicable to the Design and Construction of the Project including the BCBC, National Building Code, the Fire Protection and Life Safety Building Code Criteria, NFPA 130, City building codes and bylaws and YVR building requirements;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

"Bus Service Provider" means a provider of bus service to GVTA from time to time;

"Canada" means Her Majesty the Queen in Right of Canada;

"Capital Expenditure" means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

"Cash or Cash Equivalents" means:

- (a) marketable, direct obligations of the Government of Canada or of any political agency or subdivision thereof or the Government of the Province of British Columbia, maturing within 365 days of the date of purchase;
- (b) commercial paper maturing within 180 days from the date of purchase thereof, and rated in Canada:
 - (i) A-1+ by Standard and Poor's Rating Services or Canadian Bond Rating Service;
 - (ii) P-1 by Moody's Investors Services, Inc. or
 - (iii) R-1 (High) by Dominion Bond Rating Service; and
- (c) certificates of deposit, term deposits, overnight bank deposits or acceptances in each case maturing within 365 days of the date of purchase, deposit or acceptance which are issued, accepted or guaranteed by a bank listed on Schedule I of the *Bank Act (Canada)*;

"Casting Yard" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Casting Yard Contamination" has the meaning given in Section 1 of Schedule 7 (Real Property);

"CCTV" means closed-circuit television;

"CEAA" means the *Canadian Environmental Assessment Act*;

"Central Control" means the main control facility for the System;

"Change" means a variation, whether by addition, deletion, amendment, substitution, omission or otherwise, to any of the Requirements and Specifications or the Proposal Extracts;

"Change in Law" means the coming into force of any new Law in Canada, or amendment to or change in interpretation of any Law in Canada, after March 29, 2005, having a material effect (positive or negative) on:

- (c) the Project;
- (d) the Concessionaire, in its capacity as Concessionaire;
- (e) any Partner, in its capacity as a Partner; or
- (f) any Project Contractor, in its capacity as a Project Contractor,

except for Canadian Tax Laws of general application applicable in respect of capital taxes, the rate of taxation applicable to the general income of a Person or a change in the manner of calculation of the general income of a Person provided, however, that for greater certainty such exception will not include any other Canadian Taxes such as, but not limited to, Sales Taxes, Canadian import duties and Canadian Taxes in the nature of withholdings on cross-border interest payments, swap payments or similar financing payments.

"Change in Ownership" means any sale or other disposal, other than to Affiliates of the transferor, of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation or equity in a partnership (including the control over the exercise of voting rights conferred on that equity share capital or partnership interest or the control over the right to appoint or remove directors or other managers), which results in a Person other than the equity holders of the entity immediately prior to the change:

- (a) controlling the composition of the majority of the board of directors of the entity or of a general partner of the entity;
- (b) controlling the voting power of the board of directors or any class of shareholders of the entity or of a general partner of the entity, or both; or
- (c) holding, directly or indirectly, more than one half of the equity (either beneficially or otherwise) of that entity;

"Change Report" has the meaning given in Section 18.7;

"City" means either of the City of Richmond or the City of Vancouver as the context may require and any director, officer, elected official, employee, agent, contractor or licensee or any other party for whom the City is responsible at Law and "Cities" means both the City of Richmond and the City of Vancouver and each of their directors, officers, elected officials, employees, agents, contractors or licensees or any other party for whom any City is responsible at Law;

"Claim" means any claim, demand, action, proceeding or liability;

"Closing Date" means the date of this Agreement;

"Collateral Agreement" means an agreement between RAVCO, the Concessionaire and a Project Contractor in the form set out in Schedule 8 (Contractor's Collateral Agreement);

"Commencement of Construction" means the date Construction commences;

"Compensation Event" means any of the following events:

- (a) RAVCO's failure or delay in:

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- (d) the discovery of Undisclosed Environmental Liabilities;
- (e) a breach by RAVCO or GVTA of any of its representations, warranties, obligations or covenants under this Agreement, whether or not such breach has resulted in a RAVCO Event of Default

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- (g) except where an event is a Change in Law, any act, decision or failure to act by GVTA or YVR related specifically to the Project, including the imposition of any

requirement as a condition to obtaining a Permit issued by either of them, which causes material delay or materially increases costs of the Project, has an adverse effect on the ability of the Concessionaire to perform any of its material obligations under this Agreement or has an adverse effect on the Concessionaire's (or indirectly the Partners') receipt of Payments or other amounts hereunder;

- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Real Property Interests which are found during excavations for the purpose of carrying out the Works;

(i)

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- (j) physical damage to the System caused by the activities of either City, negligent or otherwise, on or adjacent to the Real Property Interests;
- (k) if at any time the forecast morning peak hour Ridership on the System determined under the revised Baseline Ridership Forecast pursuant to a Periodic Rebasing Event or an Optional Rebasing Event under Schedule 11 (Payments), exceeds:

- (1) 6328 Passengers per hour per direction on the portion of the Main Line between Waterfront Station and Bridgeport Station;
- (2) 3164 Passengers per hour per direction on the portion of the Main Line between Bridgeport Station and the Southern terminus of the System in Richmond; or
- (3) 3164 Passengers per hour per direction on the Airport Connector,

such that additional Operation and Maintenance is required, and such additional requirements are not the subject of a RAVCO Change; or

- (l) if the Service Commencement Deadline is extended pursuant to the terms of this Agreement to a date after January 15, 2010, the implementation of the Olympic Interruption Plan;

except to the extent that any of such events arise (directly or indirectly) as a result of any:

- (m) breach, wilful act, default, omission or negligence of the Concessionaire, a Project Contractor or a Sub-Contractor; or
- (n) performance by the Concessionaire, a Project Contractor or a Sub-Contractor that does not comply with the terms of this Agreement;

"Compensation Event Holdback" has the meaning given in Section 14.4(c);

"Compensation Notice" has the meaning given in Section 14.2;

"Compliant Bid" means a bid that meets all of the Qualification Criteria;

"Concessionaire Escrow Documents" means the documents described in Section 1.1 of Schedule 1 (Completion Documents) each of which the Concessionaire has delivered to the Escrow Agent;

"Concessionaire Event of Default" has the meaning given in Section 23.3;

"Concessionaire FMV" means an amount equal to the Fair Market Value of the equity of the Concessionaire and the Junior Debt if sold as a going concern immediately prior to the Termination Date (and assuming that no RAVCO default has occurred), as determined by the Valuator on a forecast cashflow basis;

"Concessionaire Indemnified Parties" means (a) any Partner (b) any Affiliate of any Partner (c) the Concessionaire's Representative; (d) any delegate of the Concessionaire's Representative; (e) any Project Contractor or other contractor of the Concessionaire; (f) any Sub-Contractor; and (g) any director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of the Concessionaire or any of the foregoing;

"Concessionaire's Change" means a Change requested by the Concessionaire;

"Concessionaire's Change Certificate" means the certificate to be prepared by the Concessionaire and signed by or on behalf of RAVCO pursuant to Section 19.2 containing details of a Concessionaire's Change to be implemented;

"Concessionaire's Representative" means the Person appointed by the Concessionaire under Section 10.2(a);

"Concessionaire's Rights and Benefits" has the meaning given in Section 13.5;

"Concessionaire's Rule Book" means the consolidated listing of all operating policies, procedures and rules required to assure the safe operation of the System which have been adopted by the Concessionaire, approved by RAVCO and filed with the Relevant Authority responsible for administration of the *Railway Safety Act* (British Columbia);

"Confidential Information" has the meaning given in Section 26.1;

"Construction" means the initial construction, testing, commissioning and completion of the System (as distinct from a Correction, a Repair, Operation and Maintenance or a Renovation) as required by this Agreement, including all labour, materials, construction equipment and the supply, installation, testing and commissioning of Equipment;

"Construction Approval Process" means Appendix 1 of Schedule 3 (Design and Construction Specifications);

"**Compensation Event Holdback**" has the meaning given in Section 14.4(c);

"**Compensation Notice**" has the meaning given in Section 14.2;

"**Compliant Bid**" means a bid that meets all of the Qualification Criteria;

"**Concessionaire Escrow Documents**" means the documents described in Section 1.1 of Schedule 1 (Completion Documents) each of which the Concessionaire has delivered to the Escrow Agent;

"**Concessionaire Event of Default**" has the meaning given in Section 23.3;

"**Concessionaire FMV**" means an amount equal to the Fair Market Value of the equity of the Concessionaire and the Junior Debt if sold as a going concern immediately prior to the Termination Date (and assuming that no RAVCO default has occurred), as determined by the Valuator on a forecast cashflow basis;

"**Concessionaire Indemnified Parties**" means (a) any Partner (b) any Affiliate of any Partner (c) the Concessionaire's Representative; (d) any delegate of the Concessionaire's Representative; (e) any Project Contractor or other contractor of the Concessionaire; (f) any Sub-Contractor; and (g) any director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of the Concessionaire or any of the foregoing;

"**Concessionaire's Change**" means a Change requested by the Concessionaire;

"**Concessionaire's Change Certificate**" means the certificate to be prepared by the Concessionaire and signed by or on behalf of RAVCO pursuant to Section 19.2 containing details of a Concessionaire's Change to be implemented;

"**Concessionaire's Representative**" means the Person appointed by the Concessionaire under Section 10.2(a);

"**Concessionaire's Rights and Benefits**" has the meaning given in Section 13.5;

"**Concessionaire's Rule Book**" means the consolidated listing of all operating policies, procedures and rules required to assure the safe operation of the System which have been adopted by the Concessionaire, approved by RAVCO and filed with the Relevant Authority responsible for administration of the *Railway Safety Act* (British Columbia);

"**Confidential Information**" has the meaning given in Section 26.1;

"**Construction**" means the initial construction, testing, commissioning and completion of the System (as distinct from a Correction, a Repair, Operation and Maintenance or a Renovation) as required by this Agreement, including all labour, materials, construction equipment and the supply, installation, testing and commissioning of Equipment;

"**Construction Approval Process**" means Appendix 1 of Schedule 3 (Design and Construction Specifications);

"Construction Licence" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Construction Payments" means Partial Milestone Payments and all other payments for the Work, including those described in Appendix I to Schedule 11 (Payments);

"Construction Period" means the period between the Closing Date and System Acceptance Date;

"Construction Scope" means all aspects of Design and Construction to which a Change applies, including:

- (a) the Design and Construction Requirements and the Design and Construction Specifications;
- (b) all direct and indirect costs in connection therewith;
- (c) the costs of any financing of Capital Expenditures related thereto; and
- (d) any required adjustment to Payments related thereto;

"Contract Year" means each of:

- (a) the period from the date of this Agreement to the next December 31st;
- (b) each subsequent period of 12 calendar months commencing on January 1st; and
- (c) the period from January 1st in the year in which this Agreement expires or is terminated (for whatever reason) to the Termination Date;

"Contributing Agencies Indemnified Parties" means Canada, the Province, GVTA, YVR and any Minister, director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of any of them;

"COR Access Agreement" has the meaning given in Section 1 of Schedule 7 (Real Property);

"COR Assignment Agreement" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Correction" means correction of any error or Defect in any part of the System designed, supplied or constructed by the Concessionaire and is discovered and undertaken after the System Acceptance Date;

"Corrective Maintenance" means the repair of any component of the System to restore its normal operating condition and includes the repair or replacement of a failed system or subsystem through actions such as:

- (a) investigation, localization, and isolation of faults (troubleshooting);
- (b) disassembly, reassembly, repair or replacement of the affected part or parts; and

(c) retesting of the repaired system or subsystem;

"COR-YVR Access Agreement" has the meaning given in Section 1 of Schedule 7 (Real Property);

"COR-YVR Assignment Agreement" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Cost Centres" has the meaning given in Schedule 11 (Payments);

"COV Access Agreement" has the meaning given in Section 1 of Schedule 7 (Real Property);

"COV Assignment Agreement" has the meaning given in Section 1 of Schedule 7 (Real Property);

"CPTED" means crime prevention through environmental design;

"Credited Ridership" has the meaning given in Section 1 of Schedule 11 (Payments);

"Daily Station Availability" has the meaning given in Section 1 of Schedule 11 (Payments);

"Daily Station Quality" has the meaning given in Section 1 of Schedule 11 (Payments);

"day" has the meaning given in Section 1 of Schedule 11 (Payments);

"Default Interest Rate" means interest at 2% over the Prime Rate;

"Defects" means any defect, deficiency, error or fault in the Design or Construction;

"Deficiency Notice" has the meaning given in Section 17.2 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Design" means the entire process for the initial design of the System (as distinct from the design of Corrections, Repairs or Renovations), as required by this Agreement;

"Design and Construction Price" has the meaning given in Section 3.1(b) of Appendix I to Schedule 11 (Payments);

"Design and Construction Price Balance" has the meaning given in Section 1 of Schedule 11 (Payments);

"Design and Construction Requirements" means the provisions set out in Schedule 2 (Design and Construction Requirements);

"Design and Construction Specifications" means the provisions set out in Schedule 3 (Design and Construction Specifications);

"Designated Waiting Area" means an area on every Station platform provided with additional security features as described in Schedule 3 (Design and Construction Requirements);

"DFO" means Department of Fisheries and Oceans (Canada);

"Direct Losses" means, in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges (subject to any duty to mitigate at Law), whether arising under statute, contract or at common law, which result directly from such condition, event or omission and which, in the case of negligence, are reasonably foreseeable as likely to occur:

- (a) net of related Insurance Proceeds and Insurance Receivables;
- (b) excluding any Indirect Losses; and
- (c) in the case of the Concessionaire, without limiting the foregoing:
 - (1) including the full amount of the related loss or reduction of any Payments or Ancillary Activities Revenue; and
 - (2) net of Avoidable Costs related to such event or omission;

"Disclosed Data" means any information, data and documents made available or issued to the Concessionaire or any Project Contractor or Sub-Contractor in connection with the Project by or on behalf of RAVCO, including any information relating to the Real Property Interests or the requirements of any Relevant Authority, whether before or after the execution of this Agreement;

"Discriminatory Change in Law" means a Change in Law, the economic effects of which are substantially borne by:

- (a) the Project;
- (b) the Concessionaire, in its capacity as Concessionaire,
- (c) any Partner, in its capacity as a Partner;
- (d) any Project Contractor, in its capacity as a Project Contractor,
- (e) projects being implemented as "public-private partnerships" or their equity owners in their capacity as such; or
- (f) systems the same as or similar to the System, including the design, construction, operation, maintenance or financing thereof;

"Dispute" means any disagreement, failure to agree or other dispute between RAVCO and the Concessionaire arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination hereof, whether in the law of contract or any other area of law;

"Dispute Notice" has the meaning given to it in Section 1.4(a) of Schedule 14 (Dispute Resolution Procedure);

"Dispute Resolution Procedure" means the procedure set out in Schedule 14 (Dispute Resolution);

"Distribution" means, whether in cash or in kind, any:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
- (c) payments of Junior Debt (whether of principal, interest, breakage costs or otherwise);
- (d) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the date of this Agreement and was neither in the ordinary course of business nor on commercially reasonable terms; or
- (e) receipt of any other benefit which is not received in the ordinary course of business and on commercially reasonable terms;

"DPUO" means an officer of GVTA's designated policing unit under the *Police Act* (British Columbia);

"Dwell Time" means the period of time commencing when a Train has come to a complete stop in a Station and ending the moment the Train begins to move to depart from the Station;

"Early Termination Payment Date" has the meaning given in Section 6.1 of Schedule 13 (Compensation on Termination).

"EA Approval" means the approval for the Project issued pursuant to BCEAA and CEAA;

"EAC" means the environmental assessment certificate for the Project issued pursuant to BCEAA;

"E&M Systems" means all electrical and mechanical systems designed, constructed or supplied by the Concessionaire and included in the System;

"EMC" means electro-magnetic compatibility;

"Employee Payments" means all amounts which, as a direct result of the termination of this Agreement, the Concessionaire is required to pay to its employees, or to the Operator pursuant to the terms of the Operating Contract, if RAVCO does not comply with its obligations under Section 25.3(j), and, in the case of a termination for a RAVCO Event of Default, includes all reasonable amounts payable by the Concessionaire to the senior managers described in Section 25.3(j)(2);

"Environmental Event" has the meaning given in Section 10.5(a) of Schedule 2 (Design and Construction Requirements);

"Environmental Laws" means all Laws relating to the protection of Environmental Resources and human health;

"Environmental Management Plan (Construction)" means the plan developed by the Concessionaire and approved by RAVCO pursuant to Section 10.3 of Schedule 2 (Design and Construction Requirements), the purpose of which is to ensure protection of Environmental Resources during the course of the Construction;

"Environmental Management Plan (Operation)" means the plan to be developed by the Concessionaire and approved by RAVCO pursuant to Section 5.2.4 of Schedule 4 (Operation and Maintenance Requirements) the purpose of which is to ensure protection of Environmental Resources during the Operating Period;

"Environmental Requirements" means all requirements relating to protection of Environmental Resources pursuant to the Environmental Management Plan (Construction), the Environmental Management Plan (Operation), the Permits, the EAC, the EA Approval, and requirements from time to time of Relevant Authorities;

"Environmental Resources" includes all plant, animal, land, water and air resources that may be affected by the Project;

"EPC Contract" means the engineering, procurement and construction contract to be entered into between the Concessionaire and the EPC Contractor, as amended, supplemented or replaced from time to time in accordance with this Agreement;

"EPC Contractor" means SNC-Lavalin Inc. or any assignee or replacement permitted under this Agreement;

"EPC Fixed Price" has the meaning given in Section 2.3 of Appendix I to Schedule 11 (Payments);

"Equipment" means all equipment designed, constructed or supplied by the Concessionaire comprising or used in the System including Vehicles and E&M Systems;

"Escrow Agent" means Bull, Housser & Tupper;

"Escrow Documents" means RAVCO Escrow Documents and the Concessionaire Escrow Documents;

"Escrowed Amount" has the meaning given in Section 6.1 of Schedule 13 (Compensation on Termination);

"Estimated Termination Payment Amounts" has the meaning given in Section 6.1 of Schedule 13 (Compensation on Termination);

"Estimated Market Value" means the amount determined to be the Fair Market Value of a New Concession Agreement pursuant to Section 3.2 or 3.3 of Schedule 13 (Compensation on Termination);

"Exempt Refinancing" means:

- (a) any Refinancing that was fully taken into account in the calculation of the Operating Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings (including any Concessionaire Event of Default or potential Concessionaire Event of Default);
 - (ii) movement of monies between the Accounts (as defined in the Senior Lending Agreements) in accordance with the terms of the Senior Lending Agreements as at the Closing Date;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to any Project Contract or Sub-Contract;
 - (v) approval of revised technical and economic assumptions in the Financial Model (to the extent required for forecasts under the Lending Agreements);
 - (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Concessionaire under the Senior Lending Agreements and/or amounts released from the Proceeds Account during the Availability Period (each as defined in the Senior Lending Agreements) and which are given as a result of any failure by the Concessionaire to ensure that the Work is performed in accordance with the Agreement and which are notified in writing by the Concessionaire or the Senior Lenders to RAVCO prior to being given;
 - (vii) changes to milestones for drawdown and/or amounts released from the Escrow Account during the Initial Availability Period set out in the Senior Lending Agreements and which are given as a result of any failure by the Concessionaire to ensure that Work is performed in accordance with the Agreement and which are notified in writing by the Concessionaire or the Senior Lenders to RAVCO prior to being given;

- (viii) failure by the Concessionaire to obtain any consent by statutory bodies required by the Senior Lending Agreements; or
- (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Lending Agreements;
- (d) any amendment, variation or supplement of any agreement other than any Investment Documents (as defined in the Senior Lending Agreements) resulting from a Relevant Event;
- (e) any sale of shares in the Concessionaire by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Concessionaire;
- (f) any sale or transfer of the Subordinated Lenders' (as defined in the Senior Lending Agreements) existing rights and/or interests under the Investment Documents (as defined in the Senior Lending Agreements) or securitisation of the Subordinated Lenders' or Partners' (as the case may be) existing rights or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction;

"Expiry Date" means the 35th anniversary of the Closing Date as may be extended pursuant to the terms of this Agreement;

"Fair Market Value" means the amount at which an asset or a liability would be exchanged in an arm's length transaction between informed and willing parties other than in a forced or liquidation sale;

"Financial Model" means the Concessionaire's financial model for the Project attached as Schedule 16 (Financial Model), a copy of which is attached to this Agreement in electronic format and marked as Attachment 1 thereto, as updated from time to time in accordance with the terms of this Agreement;

"Finco" means InTransit BC Finance Ltd., all of the shares of which are owned by the General Partner;

"Fire Department" means the relevant fire department;

"Fire Protection and Life Safety Building Code Criteria" means the document attached to Schedule 3 (Design and Construction Specifications) as Appendix 2;

"Five Year Operation and Maintenance Plans" has the meaning given in Section 5.6 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Force Majeure" means:

- (a) war, civil war, armed conflict or terrorism;

- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Concessionaire;
- (c) earthquake, tidal wave or flood; or
- (d) pressure waves caused by devices travelling at supersonic speeds;

"Forecast Credited Ridership" has the meaning given in Section 1 of Schedule 11 (Payments);

"GAAP" means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

"General Partner" means InTransit British Columbia GP Ltd.;

"GST" means the goods and services tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada);

"Guideway" means the bed for the Tracks, whether elevated, at grade or below grade, included in the System;

"Has Knowledge" or "Have Knowledge" means:

- (a) a natural person knows or has knowledge when information is acquired by the person under the circumstances in which a reasonable person would take cognizance of it; and
- (b) a corporation knows or has knowledge when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it;

"Hazardous Substance" means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

"Headway" means the amount of time which elapses between one Train and the next Train arriving at a Terminal Station;

"Highest Compliant Bid Price" means the price offered by the Person making the Compliant Bid (if any) with the highest bid price;

"Income Tax" means any tax imposed on the income of a Person by any Canadian Relevant Authority;

"Indemnifier" has the meaning given in Section 12.4;

"Independent Engineer" means the independent qualified professional engineering firm referred to in Section 3.1 of Schedule 2 (Design and Construction Requirements), which is initially R.W. Beck Inc.;

"IE Construction Monitoring Agreement" means the agreement to be entered into among RAVCO, the Concessionaire, the Senior Lenders, Canada and the Independent Engineer in respect of the matters referred to in this Agreement to be administered by the Independent Engineer;

"Indirect Losses" means loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive damages or any consequential loss or indirect loss of any nature, but for greater certainty, in the case of the Concessionaire does not include loss of Payments or Ancillary Activities Revenue;

"Insurance Proceeds" means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained by the Concessionaire under this Agreement;

"Insurance Receivables" means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained by the Concessionaire under this Agreement but which have not been received;

"Intellectual Property" means any or all of the following and all rights, arising out of or associated therewith: (a) all national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all industrial designs and any registrations and applications therefor throughout the world; (e) all rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world; (f) all moral rights of authors and inventors; and (g) any similar or equivalent rights to any of the foregoing anywhere in Canada;

"Interest" means interest at the Prime Rate;

"Interfere" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Invitation" has the meaning given in Recital A;

"Invoice Date" means the date of receipt by RAVCO of an invoice from the Concessionaire pursuant to Schedule 13 (Compensation on Termination);

"Junior Debt" means any amounts outstanding from time to time on any loan or credit facilities provided to the Concessionaire which rank in priority after the entitlements of the Senior Lenders, including any interest accrued on such amounts;

"Laws" means all laws, statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits, and any Building Codes;

"Lenders" means all or any of the Persons who provide financing or funding in respect of the Project under the Lending Agreements including the Governor and Company of the Bank of Ireland, Norddeutsche Landesbank Girozentrale and Société Générale and their respective agents, if any, and, if the context so permits, prospective financiers or lenders;

"Lenders' Remedies Agreement" means the agreement to be entered into between RAVCO, the Lenders and the Concessionaire in the form set out in Schedule 9 (Lenders' Remedies Agreement), as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Lending Agreements" means the agreements or instruments to be entered into by the Concessionaire or by Finco from time to time relating, directly or indirectly, to Senior Debt or Junior Debt in connection with the financing of the Project by the Concessionaire (and rescheduling or refinancing thereof) including the Trust Indenture, any bonds issued from time to time thereunder, any other security instruments creating charges or security interests in the assets of the Concessionaire and the Lenders' Remedies Agreement, as such agreements or instruments may be amended, supplemented or replaced from time to time;

"Licence" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Licence Areas" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Licence Term" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Liquid Market" means that there are sufficient private sector willing bidders (being at least three parties each of whom is capable of being a Suitable Substitute Contractor and each of whom deals with RAVCO, GVTA, YVR and the Province at arm's-length) in the market for the New Concession Agreement for the price that is likely to be achieved through a bidding process to be a reliable indicator of the Fair Market Value of this Agreement, provided that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project will not be counted for the purpose of determining whether there are sufficient willing bidders in the market;

"Main Line" means the segment of the System from Waterfront Station to the southern end of the System in the City of Richmond, excluding the Airport Connector;

"Main Line Payment Application" has the meaning given in Section 5.1(a) of Appendix I to Schedule 11 (Payments);

"Main Line Payment Certificate" has the meaning given in Section 6.1(a) of Appendix I to Schedule 11 (Payments);

"Maintenance Area" means that area of the System to be maintained by the Concessionaire as delineated on the Maintenance Area Plans;

"Maintenance Area Plans" means the plans showing the maintenance demarcation lines between which the Concessionaire has the obligation to maintain structures, infrastructure and equipment forming part of the System as shown on Schedule 6 (Proposal Extracts);

"Marine Drive Station" means the Station located at the southern end of Cambie Street near Marine Drive;

"Mediation Rules" has the meaning given in Section 1.7(d) of Schedule 14 (Dispute Resolution Procedure);

"Milestones" has the meaning given in Section 4.2 of Appendix I to Schedule 11 (Payments);

"Milestone Dates" has the meaning given in Schedule 11 (Payments);

"Millennium Line" means the SkyTrain line operated under that name running between Vancouver, Burnaby and New Westminster;

"Minor Service Change" has the meaning given in Section 1 of Schedule 11 (Payments);

"Minor Service Change Rate" has the meaning given in Section 1 of Schedule 11 (Payments);

"Municipal Access Agreements" means collectively the COV Access Agreement, the COR Access Agreement, the COR-YVR Access Agreement and the Concessionaire Assumption Agreement contemplated in each such agreement ;

"MWLAP" means the British Columbia Ministry of Water, Land and Air Protection;

"New Concession Agreement" means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

- (a) if this Agreement is terminated prior to the Service Commencement Date, the extension of the Service Commencement Deadline by such reasonable period as is agreed by RAVCO and the New Concessionaire to meet the Service Commencement Deadline;
- (b) any accrued deductions pursuant to Schedule 11 (Payments), any Deficiency Notices and any Warning Notices will be cancelled;

- (c) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Operating Period would otherwise have expired; and
- (d) RAVCO may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Concessionaire is using commercially reasonable efforts to remedy any breach of this Agreement that arose prior to the Termination Date and which is capable of being remedied;

"New Concessionaire" means the Person who has entered into or who will enter into the New Concession Agreement with RAVCO;

"NFPA" means the National Fire Prevention Association (US);

"NFPA 130" means the *Standard for Fixed Guideway Transit Systems* published by the NFPA;

"Nominal" means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation;

"Non-Fixed Assets" means all tangible and intangible personal property designed, manufactured, acquired or otherwise supplied by, or on behalf of the Concessionaire, as part of the System (including all Equipment and all Project Intellectual Property) other than tangible and intangible personal property:

- (a) ancillary to the operation of the System such as equipment, tools, and road vehicles; and
- (b) acquired for non-current repair and maintenance such as inventories, consumables and other reserves,

provided that during the Operating Period Non-Fixed Assets will include all such equipment, tools, road vehicles, inventories, consumables and other reserves that a prudent operator of a similar System would have on hand to ensure the efficient operation of the System;

"Notice" has the meaning given in Section 29.6;

"Off-Peak Arrival Credits" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Availability Factor" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Period" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Period Weight" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Quality Arrival Credits" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Scheduled Arrivals" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Vehicle Availability" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off-Peak Vehicle Quality" has the meaning given in Section 1 of Schedule 11 (Payments);

"Off The Shelf Software" has the meaning given in Section 1.1 of Schedule 5 (Intellectual Property);

"Olympic Interruption Plan" has the meaning given in Section 7.10 of Schedule 2 (Design and Construction Requirements);

"Operating Contract" means the operating agreement to be entered into between the Concessionaire and the Operator, as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Operating Costs" means expenditures incurred during the Operating Period relating to the Operation and Maintenance of the System as determined in accordance with GAAP;

"Operating Hours" for a Station for a day means the number of operating hours (including fractions of an hour) for that Station as determined pursuant to Section 4.2.1 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Operating Payments" means Availability Payments, Quality Payments and Volume Payments;

"Operating Period" means the period from the Service Commencement Date until the Transfer Date;

"Operating Permit" means a permit to operate the System issued under the *Railway Safety Act* (British Columbia);

"Operation and Maintenance" has the meaning given in Section 2.1 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Operation and Maintenance Centre" or "OMC" means the maintenance and storage facility for the System;

"Operation and Maintenance Licence" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Operation and Maintenance Requirements and Specifications" means the provisions set out in Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Operation and Maintenance Scope" means all aspects of Operation and Maintenance to which a Change applies, including:

- (a) the Operation and Maintenance Requirements and Specifications;
- (b) all direct and indirect costs in connection therewith;

- (c) the costs of any financing of Capital Expenditures related thereto; and
- (d) any required adjustment to Payments related thereto;

"Operation and Maintenance Services" means Operation and Maintenance and other services (not including the Work) to be provided by the Concessionaire (whether directly or through the Operator) to RAVCO in accordance with Schedule 4 (Operation and Maintenance Requirements and Specifications) and the other terms of this Agreement;

"Operator" means InTransit Operations Ltd. or any assignee or replacement permitted under this Agreement;

"Optional Rebasing Event" has the meaning given in Section 1 of Schedule 11 (Payments);

"Overhaul Maintenance" means the, disassembly, refurbishment, rebuilding and/or repair, and subsequent testing, of any components of the System designed, constructed or supplied by the Concessionaire;

"Partial Milestone Payments" has the meaning given in Appendix I to Schedule 11 (Payments);

"Partner" means a partner of the Concessionaire, including any general partner and any limited partner, and **"Partners"** means all of the partners of the Concessionaire, including all general partners and all limited partners;

"Partnership Agreement" means the partnership agreement among the Partners (including holders of securities convertible into equity of the Concessionaire) relating to the Concessionaire including any agreement relating to the subscription for equity (or other partnership funding) by the Partners;

"Passenger" means an individual using any segment of the System;

"Payment Period" means every four week (28 day) period during the Operating Period commencing on the Service Commencement Date;

"Payments" means Construction Payments and Operating Payments;

"Peak Arrival Credits" has the meaning given in Section 1 of Schedule 11 (Payments);

"Peak Availability Factor" has the meaning given in Section 1 of Schedule 11 (Payments);

"Peak Period" means the two periods of Business Days designated as being Peak Periods on the Service Plan then in effect provided that, as long as the total number of Peak Period hours does not exceed five hours on Business Days, such periods may be amended by the Concessionaire upon notice to RAVCO not more than once per year to reflect the hours with the highest ridership on Business Days;

"Peak Period Weight" has the meaning given in Section 1 of Schedule 11 (Payments);

"Peak Quality Arrival Credits" has the meaning given in Section 1 of Schedule 11 (Payments);

"Peak Scheduled Arrivals" has the meaning given in Section 1 of Schedule 11 (Payments);

"Peak Vehicle Availability" has the meaning given in Section 1 of Schedule 11 (Payments);

"Periodic Rebasing Event" has the meaning given in Section 1 of Schedule 11 (Payments);

"Periodic Report" has the meaning given in Section 1 of Schedule 11 (Payments);

"Permits" means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required from any Relevant Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement including the EA Approval;

"Permitted Action" has the meaning given in Section 29.19;

"Permitted Licence Uses" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Person" means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Relevant Authority.

"Planned Works Interruption" has the meaning given in Section 1 of Schedule 11 (Payments);

"PPUDO" means passenger pick-up and drop-off;

"Preliminary Change Instruction" means notice of a potential RAVCO Change delivered pursuant to Section 18.4;

"Pre-Existing Contamination" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Pre-Existing Rights Reports" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Pre-Refinancing Base Case Equity IRR" means the Base Case Equity IRR calculated immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing;

"Preventative Maintenance" means any action that is performed at scheduled intervals to maintain the System in good operating condition including the timely detection and correction of deviations from normal operation, periodic inspections, condition monitoring, critical item replacement, lubrication, adjustment, cleaning and calibration;

"Prime Rate" on any day means the annual rate of interest announced by Bank of Montreal (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time

as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

"Professional Engineer" means an engineer registered by the Association of Professional Engineers and Geoscientists of British Columbia;

"Progress Report" has the meaning given in Section 7.14 of Schedule 2 (Design and Construction Requirements);

"Project" means the Design, Construction, financing, testing, commissioning, Operation and Maintenance of the System and all roads, utilities, transportation interfaces and other works ancillary to the System in accordance with this Agreement;

"Project Contracts" means the EPC Contract and the Operating Contract and any other material contracts entered into by the Concessionaire in respect of construction, procurement or the provision of services to the Project, other than contracts with Public Utilities or Regulated and Other Utilities;

"Project Contractors" means the EPC Contractor, the Operator and any other Person (other than the Concessionaire) that is party to a Project Contract;

"Project Contractor Losses" means the amount payable by the Concessionaire to a Project Contractor under the terms of a Project Contract as a direct result of the termination of this Agreement;

"Project Control Survey" has the meaning given in Section 4.1.1 of Schedule 3 (Design and Construction Specifications);

"Project Data" means drawings, reports, documents, plans, software, formulae, calculations and all other materials, data, or information, whether oral or fixed in any form, relating to the Project, prepared by or on behalf of the Concessionaire;

"Project Intellectual Property" means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Concessionaire, any Project Contractor, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Design or Construction of the System, the Operation and Maintenance, improvement or testing of the System or otherwise for the purposes of this Agreement but does not include the Financial Model;

"Proposal Extracts" means Schedule 6 (Proposal Extracts);

"Province" means Her Majesty in Right of the Province of British Columbia;

"PST" means the tax imposed under the *Social Service Tax Act* (British Columbia);

"Public Utilities" means all sewer, water and street lighting facilities owned by any of the Cities, YVR or the Greater Vancouver Regional District;

"Quality Arrival Credit" has the meaning given in Section 1 of Schedule 11 (Payments);

"Quality Deduction" has the meaning given in Section 1 of Schedule 11 (Payments);

"Quality Event" has the meaning given in Section 1 of Schedule 11 (Payments);

"Qualification Criteria" means the criteria that RAVCO requires bidders to meet as part of the Re-letting Process, which will include:

- (a) compliance with the New Concession Agreement terms;
- (b) the financial ability to pay the capital sum bid as a single, lump sum payment to be made as of the date of the New Concession Agreement and the financial ability to comply with the New Concession Agreement terms for the price bid;
- (c) the bidder is experienced in maintaining or operating rapid transit systems or providing similar services to those being provided under this Agreement;
- (d) the technical solution proposed by the bidder is capable of delivery and the bidder is technically capable of delivering and maintaining the RAV Project; and
- (e) any other bid criteria agreed by the Concessionaire and RAVCO;

"Qualifying Bank Transaction" means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Lending Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in Section (a) above), in respect of the Senior Lending Agreements in favour of:
 - (i) any other Senior Lender;
 - (ii) any Qualifying Institution ;or
 - (iii) any other institution in respect of which the prior written consent of the RAVCO has been given;
- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Lending Agreements or the revenues or assets of the Concessionaire, whether by way of security or otherwise, in favour of:
 - (i) any other Senior Lender;
 - (ii) any Qualifying Institution; or
 - (iii) any other institution in respect of which the prior written consent of RAVCO has been given.

"Qualifying Institution" means:

- (a) a Canadian chartered bank, pension fund, or similar financial institution in Canada;
- (b) a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that manages at least \$100 million in securities and would be a "qualified institutional buyer" under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (c) an institution which is recognised or permitted under the law of any member state of the European Economic Area ("EEA") to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (d) a local authority or public authority;
- (e) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time);
- (f) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
- (g) an EEA or Swiss Insurance Undertaking (each having the meaning given in the rules from time to time of the Financial Service Authority of the United Kingdom); or
- (h) a Regulated Collective Investment Scheme (having the meaning given in the rules from time to time of the Financial Service Authority of the United Kingdom);

"Quality Management" means the execution of the comprehensive, planned and systematic program, designed and implemented by the Concessionaire pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by the Concessionaire in every material aspect of the Work and the provision of Operation and Maintenance Services;

"Quality Payment" means the payments described in Section 6 of Schedule 11 (Payments);

"Quality Plan" means that plan to be prepared by and submitted to RAVCO in accordance with the provisions of the Requirements and Specifications;

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing;

"Quality System" means the Concessionaire's organizational structure, procedures, processes and resources necessary to implement the Quality Management responsibilities;

"RAVCO Change" means a Change requested by RAVCO in accordance with Section 18;

"RAVCO Change Certificate" has the meaning given in Section 18.11;

"RAVCO Escrow Documents" means the documents described in Section 2.1 of Schedule 1 (Completion Documents) each of which RAVCO has delivered to the Escrow Agent;

"RAVCO Events of Default" has the meaning given in Section 24;

"RAVCO Indemnified Parties" means (a) any contractor or subcontractor of RAVCO; (b) RAVCO's Representative; (c) any delegate of RAVCO's Representative; and (d) any director, officer, employer, agent, servant, representative or advisor (including legal and financial advisors) of RAVCO or any of the foregoing;

"RAVCO Payment Obligation" has the meaning given in Section 28.1;

"RAVCO Replacement" has the meaning given in Section 29.3;

"RAVCO's Representative" means the Person appointed by RAVCO under Section 10.1(a);

"Real Property Interests" means all titles, leases, licences, rights-of-way, undersurface rights, easements and other interests in land acquired by RAVCO as required pursuant to Schedule 7 (Real Property);

"Real Property Interest Contractors" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Real Property Tax" and **"Real Property Taxes"** has the meaning given in Section 1 of Schedule 7 (Real Property);

"Rectification Milestone" means a Milestone indicated as being a rectification milestone in Appendix K to Schedule 11 (Payments);

"Referee" means the Person appointed under Section 1.3 of Schedule 14 (Dispute Resolution Procedure);

"Referee Notice" has the meaning given in Section 1.6 of Schedule 14 (Dispute Resolution Procedure);

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Senior Debt;

- (b) the exercise of any right, or the grant of any waiver or consent, under any Senior Lending Agreement;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Lending Agreements or the creation or granting of any other form of benefit or interest in either the Senior Lending Agreements or the contracts, revenues or assets of the Concessionaire whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Concessionaire or another Person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting the Concessionaire's ability to carry out any of (a)-(c) above,

but excluding any financing related to Relevant Events;

"Refinancing Gain" means an amount equal to the greater of zero and $[(A - B) - C]$, where:

- A = the net present value of the Distributions, calculated using the Base Case Equity IRR, projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing;
- B = the net present value of the Distributions, calculated using the Pre-Refinancing Base Case Equity IRR, to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and
- C = any adjustment required to raise the Pre-Refinancing Base Case Equity IRR to the Threshold Equity IRR;

"Regulated and Other Utilities" means all utilities, other than Public Utilities, including electrical, gas, telecommunications, cable, steam, trolley wires and fuel distribution utilities;

"Re-letting Costs" means the reasonable costs incurred by RAVCO in carrying out the Re-letting Process;

"Re-letting Process" means the process set out in Section 2 of Schedule 13 (Compensation on Termination);

"Re-letting Process Monitor" means a third party appointed by the Concessionaire pursuant to Section 2.9 of Schedule 13 (Compensation on Termination);

"Relevant Authority" means, with respect to any circumstance or matter, any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, in each case having jurisdiction over such circumstance or matter;

"Relevant Event" means a:

- (a) Compensation Event;
- (b) RAVCO Change;
- (c) Concessionaire Change which has been approved by RAVCO and which results in a net benefit to the Project; or
- (d) Change in Law;

"Relevant Person" means a Partner and any of its Affiliates;

"Relief Event" means any of the following events:

- (a) fire, explosion, lightning, extraordinary adverse weather conditions, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation and earthquake or acts of God (to the extent it does not constitute an event of Force Majeure);
- (b) any accidental loss or damage to the Real Property Interests or the System or any roads servicing them;
- (c) any failure or shortage of power, fuel or transport occurring outside the Real Property Interests or the System provided such failure or shortage has not occurred as a consequence of a failure by any part of the Work;
- (d)
- (e) a Change in Law (including a Discriminatory Change in Law);
- (f)

S.17(1)(e)
S.21

S.17(1)(e)
S.21

- (g)

(h)

S.17(1)(e)
S.21

(i)

(j) material interference with Operations and Maintenance caused by the activities of third parties on or adjacent to the Real Property Interests:

(i) including contractors for adjacent developments or road works and activities undertaken by, or on behalf of, Public Utilities or Regulated and Other Utilities; and

(ii) excluding work undertaken by third parties on behalf of the Concessionaire or those for whom the Concessionaire is responsible at Law or under Section 4.3;

(k) any delay or disruption of Operation and Maintenance Services if and to the extent such delay or disruption would have been avoided if the Design of all segments of the System that carry Passengers had been double-tracked rather than single-tracked;

(l) any delay or disruption of Operation and Maintenance Services if and to the extent such delay or disruption would have been avoided if the Design of the System had included the pocket track near Waterfront Station described in the response to the Invitation submitted to RAVCO on behalf of the Concessionaire;

(m)

S.17(1)(e)
S.21

(n) if and to the extent a Special Event:

- (1) results in the reduction of the amount of the Availability Payment or the Quality Payment to which the Concessionaire would have otherwise been entitled; or
 - (2) interferes with the ability of the Concessionaire to meet the average response times set out in Section 6.2.1 of Schedule 4 (Operations and Maintenance);
- (o) any delay or disruption of Operation and Maintenance Services resulting from the Concessionaire's reasonable implementation of the "Half-Life Refurbishment of Vehicles" described in the Proposal Extracts if and to the extent:
 - (1) the Concessionaire had fewer than 22 Trains; and
 - (2) such delay or disruption would have been avoided if the Concessionaire had at least 22 Trains;
- (p) any unreasonable delay in the payment of Insurance Proceeds;
- (q) an event of Force Majeure to the extent that relief is not provided for under Section 16; or
- (r) if and to the extent not a Compensation Event and notwithstanding subsections (r) and (s) of this definition, any interruption in the Work or delay in achieving Service Commencement arising as a result of the Olympic Interruption Plan referred to in Section 7.10 of Schedule 2 (Design and Construction Requirements);

except to the extent that any of such events arise, directly or indirectly, as a result of any:

- (s) breach, wilful act, default, omission or negligence of the Concessionaire, a Project Contractor or a Sub-Contractor; or
- (t) performance by the Concessionaire, a Project Contractor or a Sub-Contractor that does not comply with the terms of this Agreement;

"Relief Event Holdback" has the meaning given in Section 15.4(c);

"Relief Notice" has the meaning given in Section 15.2(a);

"Relief Period" has the meaning given in Section 1 of Schedule 11 (Payments);

"Renovation" means an alteration of the System, or any component of the System undertaken at any time after the System Acceptance Date;

"Repair" means a repair to the System, or any component of the System, undertaken at any time after the System Acceptance Date;

"Reporting Error" has the meaning given in Section 1 of Schedule 11 (Payments);

"Requirements and Specifications" means the Design and Construction Requirements, the Design and Construction Specifications and the Operation and Maintenance Requirements and Specifications;

"Restoration Report" has the meaning given in Section 11.4;

"Richmond Centre Station" means the Station located near No. Three Road and Granville Avenue in Richmond;

"Ridership" has the meaning given in Section 1 of Schedule 11 (Payments);

"Ridership Calculation Methodology" has the meaning given in Section 1 of Schedule 11 (Payments);

"Ridership Consultant" has the meaning given in Section 1 of Schedule 11 (Payments);

"Right of Way Drawings" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Route Segments" has the meaning given in Section 1 of Schedule 11 (Payments);

"ROW" means right-of-way;

"Sales Tax" and **"Sales Taxes"** means GST, PST and any other goods and services tax, retail sales tax or value-added tax imposed by any Canadian Relevant Authority whether characterized as a goods and services tax, sales tax, value-added tax, business transfer tax or otherwise;

"SCADA" means a control and data acquisition system to be provided pursuant to Section 11.9 of Schedule 3 (Design and Construction Requirements);

"Scheduled Headway" has the meaning given in Section 1 of Schedule 11 (Payments);

"Scheduled Service Commencement Date" means the date shown as the scheduled Service Commencement Date on the Approved Project Schedule, as amended from time to time, which as of the date of this Agreement is November 30, 2009;

"Security Trustee" means the trustee appointed under the Trust Indenture;

"Senior Debt" means:

- (a) all amounts outstanding at the Termination Payment Date, including interest and default interest accrued as at that date, from the Concessionaire or Finco to the Senior Lenders under the Senior Lending Agreements;
- (b) cost of early termination of interest rate hedging arrangements and other breakage costs payable by the Concessionaire or Finco to the Senior Lenders as a result of a prepayment under the Senior Lending Agreements; and

- (c) all other fees, costs and expenses for which the Concessionaire or Finco is liable under the Senior Lending Agreements;

"Senior Lenders" means Lenders to whom Senior Debt is owed, but for greater certainty does not include Finco;

"Senior Lending Agreements" means the Lending Agreements other than those related to Junior Debt;

"Service Commencement" means the commencement by the Concessionaire of Passenger service on the System as described in Section 19 of Schedule 3 (Design and Construction Specifications);

"Service Commencement and Startup Plan" has the meaning given in Section 5.2 of Schedule 4 (Operation and Maintenance Requirements and Specifications);

"Service Commencement Date" means the date Service Commencement is achieved;

"Service Commencement Deadline" means November 30, 2009, as may be extended pursuant to this Agreement;

"Service Plans" means the various plans for Train service on the System set out in Schedule 4 (Operation and Maintenance Requirements and Specifications) and **"Service Plan"** means any of them;

"Settlement Meeting" has the meaning set out under Section 1.7 of Schedule 14 (Dispute Resolution Procedure);

"Shadow Fare" has the meaning given in Section 1 of Schedule 11 (Payments);

"SkyTrain" means the SkyTrain system operated by GVTA on its Millennium Line and Expo Line;

"Small Works" means any change to the System requested by RAVCO pursuant to Section 20.2 having an individual cost not exceeding \$50,000, Adjusted for Inflation;

"Small Works Rates" has the meaning given in Section 20.1;

"SMS" means Safety Management System;

"Special Event" means an event, such as a sporting event, concert, public performance convention or conference, which:

- (a) RAVCO designates in advance as a Special Event;
- (b) RAVCO and the Concessionaire agree is a Special Event; or

- (c) the Concessionaire demonstrates, to the reasonable satisfaction of RAVCO, resulted in abnormally high Passenger boardings on the System at any particular time during a Reporting Period;

"Special Event Kilometres" has the meaning given in Section 1 of Schedule 11 (Payments);

"Special Event Kilometre Rate" has the meaning given in Section 1 of Schedule 11 (Payments);

"Special Event Ridership" has the meaning given in Section 1 of Schedule 11 (Payments);

"Special Event Staff Costs" has the meaning given in Section 1 of Schedule 11 (Payments);

"Special Events Adjustment" has the meaning given in Section 1 of Schedule 11 (Payments);

"Station" means all Passenger stations on the System;

"Station Availability" has the meaning given in Section 1 of Schedule 11 (Payments);

"Station Availability Factor" has the meaning given in Section 1 of Schedule 11 (Payments);

"Station Quality" has the meaning given in Section 1 of Schedule 11 (Payments);

"Sub-Contract" means any contract entered into by a Project Contractor, or a sub-contractor of a Project Contractor or any of their respective sub-contractors, with one or more third parties in relation to the carrying out of the Work, the Operation and Maintenance Services, a Renovation, Repair or Correction or any of the Concessionaire's other obligations under this Agreement, as amended or replaced from time to time in accordance with this Agreement;

"Sub-Contractor" means any third party that enters into a Sub-Contract;

"Sublicence" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Sublicence Contractor" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Sub-Station" means an electrical power sub-station that converts and distributes power for the System;

"Substitute Service" has the meaning given in Section 1 of Schedule 11 (Payments);

"Suitable Substitute Concessionaire" has the meaning given to it in the Lenders' Remedies Agreement;

"Supplemental Grant" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Surplus Space" has the meaning given in Section 1 of Schedule 7 (Real Property);

"System" means the entire rapid transit system to be designed, constructed, supplied, financed, tested, commissioned, operated and maintained in accordance with this Agreement, including the Main Line, the Airport Connector, the Operation and Maintenance Centre and the

Equipment and, for greater certainty, includes the components of the System as they are constructed or supplied;

"System Acceptance" means the completion of all of the Design and Construction in accordance with Schedule 2 (Design and Construction Requirements) and Schedule 3 (Design and Construction Specifications) and includes the correction of any Defects that were identified as of the Service Commencement Date;

"System Acceptance Date" means the date on which System Acceptance occurs;

"System Availability" has the meaning given in Section 1 of Schedule 11 (Payments);

"System Quality" has the meaning given in Section 1 of Schedule 11 (Payments);

"Tax" or "Taxes" means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Relevant Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

"Term" has the meaning given in Section 3.1;

"Terminal Stations" means Waterfront Station, Bridgeport Station, Airport Terminal Station and Richmond Centre Station, and **"Terminal Station"** means any one of them;

"Termination Date" means the Expiry Date or such earlier date on which this Agreement may be terminated in accordance with its terms;

"Termination Payment" means the amount owing by RAVCO to the Concessionaire pursuant to Schedule 13 (Compensation on Termination);

"Termination Payment Date" means the date on which RAVCO must make the Termination Payment as provided for in Section 8.1 of Schedule 13 (Compensation on Termination);

"Threshold Equity IRR" means ^{5.171X2) 6.21} calculated as if the Concessionaire were a fully taxable single purpose British Columbia corporation taking the maximum of all deductions permitted under Tax Laws and otherwise minimizing its tax payable;

"Tracks" means the track supported by the Guideway on which Vehicles operate;

"Train" means a Vehicle or Vehicles operating as one unit on the System;

"Train Control System" means the train control system provided pursuant to Section 11.4 of Schedule 3 (Design and Construction Specifications);

"Transfer Date" means the earlier of:

- (a) the Early Termination Payment Date; and
- (b) the Termination Payment Date;

"TransLink Regional System Transit Rules" means the Public Safety and Conduct Rules applicable to the public transit services within the jurisdiction of GVTA which have been approved by GVTA pursuant to the *Greater Vancouver Transportation Authority Act*;

"TransLink Regional System Transit Tariff" means the passenger user fees, charges or fares and related policies and procedures applicable to the public transit services within the jurisdiction of GVTA and which have been approved by GVTA pursuant to the *Greater Vancouver Transportation Authority Act*;

"Trust Indenture" means a trust indenture among a security trustee and the Concessionaire, as such agreement may be amended, supplemented, restated or otherwise modified from time to time;

"Tunnel" or "Tunnels" means the tunnels included in the System;

"TVM" means ticket vending machine;

"Ultimate Train Length" has the meaning given in Section 2.5.1 of Schedule 3 (Design and Construction Specifications);

"Unanimous Shareholders' Agreement" means the shareholders' agreement among the holders of all the issued and outstanding shares in the capital of the General Partner;

"Undisclosed Environmental Liabilities" means all Hazardous Substances that are at any time discovered in the Real Property Interests or property adjacent to the Real Property Interests (including any Pre-Existing Contamination, as such term is defined in Schedule 7 (Real Property), except Hazardous Substances in respect of which the Concessionaire has agreed to indemnify RAVCO under Section 12.1(e);

"Unfunded RAVCO Payment Obligations" has the meaning given in Section 28.2;

"Uninsurable" means, in relation to a risk:

- (a) insurance is not available to the Concessionaire in respect of the Project with reputable insurers of good standing in respect of such risk; or
- (b) the insurance premium payable for insuring such risk at the levels and on the terms required by this Agreement is at such a level that concessionaires, owners or others having a substantially similar interest in a transit system in North America are not generally insuring against such risk with reputable insurers of good standing in North America, the United Kingdom, Europe or Australia having a credit rating of (i) A- or better with AM BESTS or; (ii) the equivalent thereof by any other recognized insurance rating agency;

"Unsafe" has the meaning given in Section 1 of Schedule 11 (Payments);

"Upper Level Demand" has the meaning given in Figure 2.4.2 of Schedule 3 (Design and Construction Specifications);

"Utility Relocation Costs" has the meaning given in Section 14.2 of Schedule 2 (Design and Construction Specifications);

"Validator" means a machine, integrated with or co-located with the TVMs at each Station entrance, used to validate GVTA prepaid tickets;

"Valuator" means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators;

"Vehicle Availability" has the meaning given in Section 1 of Schedule 11 (Payments);

"Vehicle Quality" has the meaning given in Section 1 of Schedule 11 (Payments);

"Vehicles" means all rolling stock used to carry Passengers on the System;

"Volume Payments" means the payments described in Section 4 of Schedule 11 (Payments);

"Warning Notice" has the meaning given in Section 23.2;

"Waterfront Station" means the Station located in downtown Vancouver adjacent to the SkyTrain Waterfront Station;

"Weighted Ridership" has the meaning given in Section 1 of Schedule 11 (Payments);

"West 6th Avenue and Cambie Street Contamination" has the meaning given in Section 1 of Schedule 7 (Real Property);

"Work" means anything and everything required to be done to achieve System Acceptance and includes the Design and Construction (including any temporary works) to be performed by the Concessionaire in accordance with this Agreement, including, for greater certainty, any work performed by the Concessionaire or the EPC Contractor prior to the Closing Date pursuant to the Approved Advance Works Agreement;

"Work Site" means any place where any of the Work is being undertaken;

"Working Timetable" means the timetable in effect on the System from time to time which reflects the Service Plan then in effect;

"YVR" means the Vancouver International Airport Authority; and

"YVR Non-Competition Agreement" means the non-competition agreement among the Concessionaire, RAVCO and YVR in the form set out in Schedule 17 (YVR Non-Competition Agreement).

1.2 Construction and Interpretation

In this Agreement, including the recitals, Schedules and appendices to this Agreement, except where expressly stated to the contrary or the context otherwise requires:

- (a) the recitals and headings to Sections and Schedules are for convenience only and will not affect the interpretation of this Agreement;
- (b) each reference in this Agreement to "Section" and "Schedule" is to a Section of, and a Schedule to, this Agreement;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, officer, agency or similar body;
- (e) each reference to a guideline, policy, regulation, rule or directive is deemed to be a reference to any successor or replacement of such guideline, policy, regulation, rule or directive;
- (f) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (g) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (h) all references to amounts of money mean lawful currency of Canada;
- (i) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied;
- (j) the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning;
- (k) the words "include" and "including" are to be construed as meaning "including, without limitation"; and
- (l) except to the extent otherwise expressly provided by this Agreement, any requirement contained herein for the Concessionaire to consult with, or have regard to the proposals or comments of any Person or to have due regard to, or take account of, any matter or representation will not be construed as a requirement to adopt, incorporate or comply with the result of any such consultation, such proposals or such matter.

1.3 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

- (a) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- (b) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of such determination or this Section 1.3, the fundamental intentions of the parties in this Agreement are frustrated, the parties will use reasonable efforts to amend, supplement or otherwise vary this Agreement to put each party in a position substantially equivalent to that which is consistent with their mutual intention in entering into this Agreement. If the parties cannot agree on the aforementioned adjustments within six months, this Agreement may be terminated by either party and the parties' rights on such termination will be the same as in the case of a termination for Force Majeure.

1.4 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

1.5 Schedules

All Schedules are included in and form part of this Agreement.

1.6 Conflicting Provisions

If there is any conflict between:

- (a) the main body of this Agreement and any of the Schedules hereto other than Schedule 8 (Contractor's Collateral Agreement) or Schedule 9 (Lenders' Remedies Agreement), the provisions of the main body of this Agreement will prevail; and
- (b) this Agreement and any Collateral Agreement or the Lenders' Remedies Agreement, the provisions of such Collateral Agreement or the Lenders'

Remedies Agreement will prevail, and among such agreements, the Lenders' Remedies Agreement will be paramount; and

- (c) Schedule 6 (Proposal Extracts) and any of Schedule 2 (Design and Construction Requirements), Schedule 3 (Design and Construction Specifications) or Schedule 4 (Operation and Maintenance Requirements and Specifications), as the case may be, Schedule 2 (Design and Construction Requirements), Schedule 3 (Design and Construction Specifications) or Schedule 4 (Operation and Maintenance Requirements and Specifications), as the case may be, will prevail.

2. PUBLIC PRIVATE PARTNERSHIP

2.1 Purpose of the Project

The purpose of the Project is to design, construct, finance, test, commission, operate and maintain a rapid transit system running along the Alignment and connecting downtown Vancouver with Richmond City Centre and the Airport in accordance with this Agreement.

2.2 Cooperation

Without expanding or modifying the obligations of the parties set out in this Agreement or creating additional obligations to those already set forth herein, RAVCO and the Concessionaire acknowledge that this Agreement is a "public-private partnership" in which both parties have the objectives of achieving greater efficiencies, achieving the optimal allocation of risk and providing benefits for users of the System and for participating Relevant Authorities than could be achieved if procurement, operation and maintenance were undertaken by the Relevant Authorities themselves. Throughout the Term, RAVCO and the Concessionaire will cooperate with each other with a view to furthering the purposes and objectives of this Agreement, including through the establishment of such committees, groups and lines of communication as may reasonably be requested by either party.

3. TERM

3.1 Term

Subject to Section 3.2, the term of this Agreement (the "Term") will commence on the date of this Agreement and will continue until the Termination Date.

3.2 Extension of Term

The Term may be extended for such period and on such terms and conditions as RAVCO and the Concessionaire may agree.

3.3 Delivery of Escrow Documents

On the Closing Date:

- (a) RAVCO will direct the Escrow Agent to deliver the RAVCO Escrow Documents to the Concessionaire; and
- (b) the Concessionaire will direct the Escrow Agent to deliver the Concessionaire Escrow Documents to RAVCO.

4. THE CONCESSION

4.1 Design, Construct, Finance, Operate and Maintain

Subject to and in accordance with the provisions of this Agreement, the Concessionaire will:

- (a) carry out Design and Construction in accordance with the Design and Construction Requirements, the Design and Construction Specifications and all applicable Laws;
- (b) throughout the Operating Period, carry out Operation and Maintenance, Correction and Repair in accordance with the Operation and Maintenance Requirements and Specifications and all applicable Laws; and
- (c) obtain sufficient financing to enable the Concessionaire to perform its obligations under this Agreement.

4.2 No Other Business

The Concessionaire will not engage in any business or activity other than the business or activities related to, and conducted for, the purposes of the Project, the Ancillary Activities and such other businesses or activities as are expressly permitted hereunder.

4.3 Concessionaire Responsible

The Concessionaire will, as between itself and RAVCO, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of the Concessionaire's Representative, all Project Contractors and Sub-Contractors and all directors, officers, employees, contractors and agents of the Concessionaire, the Concessionaire's Representative, any Project Contractor or any Sub-Contractor. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire will be construed accordingly to include any such act, default, omission, breach or negligence committed by the Concessionaire's Representative, a Project Contractor or Sub-Contractor or any director, officer, employee or agent of the Concessionaire, the Concessionaire's Representative, a Project Contractor or a Sub-Contractor.

4.4 RAVCO Responsible

RAVCO will, as between itself and the Concessionaire, be responsible for the performance, acts, defaults, omissions, breaches and negligence of RAVCO's Representative, GVTA and YVR and all directors, officers, employees, contractors and agents of RAVCO, RAVCO's Representative, GVTA and YVR. All references in this Agreement to any act, default, omission, breach or negligence of RAVCO will be construed accordingly to include any such act, default,

omission, breach or negligence committed by any director, officer, employee, contractor, agent or invitee of RAVCO, RAVCO's Representative, GVTA or YVR.

4.5 Ownership of Assets

During the Term, the Concessionaire will acquire and hold all Non-Fixed Assets and RAVCO will acquire and hold the Real Property Interests subject to the Concessionaire's rights and obligations set out in Schedule 7 (Real Property).

5. PAYMENT

5.1 Payment Schedule

RAVCO will pay the Concessionaire as set out in Schedule 11 (Payments) to such accounts as the Concessionaire shall notify to RAVCO in writing. RAVCO will use commercially reasonable efforts to implement directions from the Concessionaire regarding changes in payment account or accounts as soon as reasonably practicable.

5.2 Limitation on Payments

Other than any payments specifically provided for or specifically contemplated in this Agreement, including Schedule 11 (Payments), or any other written agreement between the parties, the Concessionaire will have no right to any further payment from RAVCO in connection with the Work or the Operation and Maintenance Services or otherwise in connection with the Project.

5.3 RAVCO's Right of Set Off

RAVCO may set off any liquidated amounts owing by the Concessionaire to RAVCO under this Agreement against:

- (a) Payments and Termination Payments payable under Section 2 or 3 of Schedule 13 (Compensation on Termination); and
- (b) Termination Payments payable under Sections 1 or 4 of Schedule 13 (Compensation on Termination) but only to the extent that after any such an amount has been set off, such Termination Payment made would be an amount greater than or equal to the Senior Debt.

5.4 Concessionaire's Right of Set Off

The Concessionaire may set off any liquidated amounts owing by RAVCO to the Concessionaire under this Agreement against any payments due by the Concessionaire to RAVCO under this Agreement.

6. PROJECT CONTRACTS

6.1 Project Contracts

The Concessionaire will not:

- (a) terminate or agree to the termination of all or any material part of any Project Contract;
- (b) make or agree to any material amendment of any Project Contract, in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or allow others in any material respect to depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under a Project Contract;
- (c) permit any Project Contractor to assign or transfer to any Person any of such Project Contractor's rights or obligations under a Project Contract other than by way of a Sub-Contract;
- (d) enter into any Project Contract other than those entered on or before the Closing Date,

unless the Concessionaire has, at its earliest practicable opportunity, submitted to RAVCO notice of the proposed course of action (and any relevant documentation) and RAVCO has raised no reasonable objection in writing within:

- (e) three Business Days of receipt of such notice, if the Concessionaire is seeking to terminate a Project Contract and such Project Contract may, in accordance with its terms, be terminated immediately by the Concessionaire; and
- (f) 20 Business Days (10 Business Days if prior to Service Commencement) of receipt of such notice in all other cases.

6.2 Replacement Project Contract

If any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project, the Concessionaire:

- (a) will forthwith enter into a replacement contract or contracts (subject to compliance with Section 6.1) upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) will, and will cause the replacement Project Contractor to, enter into a Collateral Agreement.

6.3 Delivery of Project Contracts and Lending Agreements

If at any time any amendment is made to any Project Contract or Lending Agreement, or the Concessionaire enters into a new Project Contract or Lending Agreement (or any agreement which affects the interpretation or application of any Project Document or Lending Agreement), the Concessionaire will deliver to RAVCO a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Concessionaire.

7. REAL PROPERTY

7.1 Real Property Interests

Schedule 7 (Real Property) sets out the Real Property Interests and the parties rights and obligations in connection therewith.

8. NAMING, SIGNAGE AND INTELLECTUAL PROPERTY

8.1 System Name

The System will be called the "Canada Line".

8.2 Station Names

The Stations will have the names set out in Schedule 6 (Proposal Extracts) RAVCO:

- (a) acting reasonably, may at any time add words to any Station name to include specific identification for any Station (such as local features, amenities or landmarks) by written notice to the Concessionaire and any such addition made prior to the fabrication of permanent signs for the System will not constitute a RAVCO Change; and
- (b) will be entitled to retain all revenue received from any Person in connection with any Station name.

8.3 Use of Names

The Concessionaire may use the name of the System and the name of Stations only for activities and purposes directly related to the Project and this Agreement. The Concessionaire may not use for public purposes any name for the System or any Station other than those described in Sections 8.1 and 8.2.

8.4 Concessionaire's Signs

The Concessionaire, its Affiliates, the Project Contractors and Sub-Contractors will be permitted to maintain appropriate signage indicating their involvement in the Project and the name, logos and trade marks of such parties may appear on the Main Line, including in Stations and Vehicles, provided that all such signs comply with all applicable Laws and the Requirements and Specifications.

8.5 Olympic Trademark

The Concessionaire will not:

- (a) use "2010" or any other mark owned or licensed by the International Olympic Committee or the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games; or

- (b) associate the Project or the System in any way with the 2010 Olympic and Paralympic Winter Games,

unless the Concessionaire has licensed such rights or otherwise received any required consent or approval in writing from the appropriate approving bodies.

8.6 Intellectual Property

Schedule 5 (Intellectual Property) sets out the parties' rights and obligations with respect to Project Intellectual Property.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to RAVCO that:

- (a) the Concessionaire is a limited partnership duly created and validly existing under the *Partnership Act* (British Columbia) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all documents, instruments and agreements required to be executed and delivered by the Concessionaire pursuant to this Agreement;
- (b) the General Partner is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia) and has full power and capacity to enter into, carry out the transactions contemplated by, and duly observe and perform all its obligations contained in, this Agreement and all documents, instruments and agreements required to be executed and delivered by the General Partner pursuant to this Agreement;
- (c) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Concessionaire and the General Partner pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary partnership action on the part of the Concessionaire and corporate action on the part of the General Partner, and this Agreement has been duly executed and delivered by the General Partner on behalf of the Concessionaire and constitutes a legal, valid and binding obligation of the Concessionaire enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (d) all required third party consents to the execution by the Concessionaire of, and performance of its obligations under, this Agreement have been received, other than the Permits and other approvals contemplated herein to be obtained in

connection with the Design, Construction, Operation and Maintenance of the Project;

- (e) except in respect of liabilities that have arisen in the ordinary course of the management of the affairs of the Concessionaire in connection with this Agreement and all other agreements referred to herein or contemplated hereby, the Concessionaire has no material financial obligations;
- (f) other than as set out in Schedule 10 (Concessionaire Corporate Information), to the extent that the Concessionaire Has Knowledge, there are no current, pending or threatened, actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions, or other proceedings, of, by, against, or relating to, the Concessionaire which could have a material adverse effect on the ability of the Concessionaire to perform its obligations under this Agreement and the Concessionaire does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;
- (g) the information concerning the Concessionaire and General Partner set out in Schedule 10 (Concessionaire Corporate Information) is true and accurate and except as set out in Schedule 10 (Concessionaire Corporate Information) or in the provisions of the agreements and instruments referred to therein, there is not outstanding at the date hereof any offer, agreement or other arrangement whereby:
 - (1) any Person is at the date of this Agreement or at any time entitled to or obligated to subscribe for or take by means of transfer or by conversion of any form of investment or security any securities or voting rights in the Concessionaire or the General Partner (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against the Concessionaire, the General Partner or any other Person); or
 - (2) any alteration to the Partnership Agreement or the Unanimous Shareholders' Agreement may take effect;
- (h) the copy of the Partnership Agreement, the Unanimous Shareholders' Agreement and the constating documents of the General Partner certified by appropriate officers of the General Partner and delivered to RAVCO immediately prior to entering into this Agreement are true and accurate and there are no outstanding proposals to amend such documents;
- (i) the Concessionaire has delivered to RAVCO copies of all agreements to which the Concessionaire is a party and which are material to the Project or the affairs of the Concessionaire; and
- (j) the Project Data and the Project Intellectual Property, and to the extent the Concessionaire Has Knowledge, the Disclosed Data, do not and will not

infringe, and are not a misappropriation of, any third Person's Intellectual Property rights, and as of the date of this Agreement to the extent that the Concessionaire Has Knowledge, no allegations of infringement or notices of misappropriation have been issued by any Person regarding the Project Data and the Project Intellectual Property.

9.2 Representations and Warranties of RAVCO

RAVCO hereby represents and warrants to the Concessionaire that:

- (a) RAVCO is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all documents, instruments and agreements required to be executed and delivered by RAVCO pursuant to this Agreement;
- (b) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by RAVCO pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of RAVCO, and this Agreement has been duly executed and delivered by RAVCO and constitutes a legal, valid and binding obligation of RAVCO enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (c) all required third party consents to the execution by RAVCO of, and performance of its obligations under, this Agreement have been received, including the consents of all Relevant Authorities;
- (d) all necessary funding commitments, as set out in Section 2.1(c) of Schedule 1 (Completion Documents), have been received and based thereon, RAVCO has the financial capacity to perform all of its obligations under this Agreement and the agreements and transactions contemplated hereunder;
- (e) to the extent that RAVCO Has Knowledge, there are no current, pending or threatened, actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions, or other proceedings, of, by, against, or relating to, RAVCO which could have a material adverse effect on the ability of RAVCO to perform its obligations under this Agreement and RAVCO does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding other than:

- (1) an appeal, filed July 29, 2005, of the decision of the Supreme Court of British Columbia dated June 30, 2005 dismissing the Petition filed by the Do RAV Right Coalition in Action No.L050861 (Vancouver Registry); and
 - (2) a notice of intention to proceed with a legal action dated April 12, 2005 delivered to the City of Vancouver by A. Cameron Ward & Company, Solicitors, on behalf for Susan Heyes Inc. and certain other unidentified business owners along the Cambie Street corridor;
- (f) to the extent RAVCO Has Knowledge, there are no facts or information relating to the Project or Disclosed Data which RAVCO has intentionally not disclosed to the Concessionaire and which, if learned by the Concessionaire, might reasonably be expected to materially affect the Concessionaire's evaluation of the risks the Concessionaire is assuming pursuant to this Agreement or might reasonably be expected to deter the Concessionaire from completing the transactions contemplated by this Agreement on the terms of this Agreement.

9.3 Liability for Disclosed Data

Subject to Section 9.2(f) and except as set out in Schedule 7 (Real Property), RAVCO:

- (a) gives no warranty or undertaking of whatever nature in respect of the Disclosed Data and specifically (but without limitation), RAVCO does not warrant that the Disclosed Data represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution of this Agreement) relevant or material to or in connection with the Project or the obligations of the Concessionaire under this Agreement or under any of the Project Contracts;
- (b) will not be liable to the Concessionaire in respect of any failure to disclose or make available to the Concessionaire (whether before, on or after the execution of this Agreement) any information, documents or data, nor any failure to review or to update the Disclosed Data, nor any failure to inform the Concessionaire (whether before, on or after execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data; and
- (c) will not be liable to the Concessionaire for and the Concessionaire will not seek to recover from RAVCO, any RAVCO Indemnified Parties or any Contributing Agencies Indemnified Parties, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use, reliance on or application of the Disclosed Data by, or on behalf of, the Concessionaire, any Project Contractor or any Sub-Contractor.

9.4 Representations and Warranties of GVTA

GVTA hereby represents and warrants to the Concessionaire that:

- (a) GVTA is a corporation existing under *Greater Vancouver Transportation Authority Act* (British Columbia) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement;
- (b) the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of GVTA and this Agreement has been duly executed and delivered by GVTA and constitutes a legal, valid and binding obligation of GVTA enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (c) all required third party consents to the execution by GVTA of, and performance of its obligations under, this Agreement have been received, including the consents of all Relevant Authorities;
- (d) the execution and delivery of this Agreement by GVTA and the performance by GVTA of its obligations hereunder do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of any Laws applicable to GVTA; and
- (e) the GVTA board of directors has amended the strategic transportation plan (as defined in the *Greater Vancouver Transportation Authority Act* (British Columbia)) to include the Project and such plan, as amended, is in effect as at the date of this Agreement.

9.5 Concessionaire Investigation and Assumption of Risk

The Concessionaire acknowledges and confirms that:

- (a) it has conducted its own analysis and review of the Project and has, before the execution of this Agreement, acted reasonably in satisfying itself as to the accuracy, completeness and fitness for purpose of any Disclosed Data upon which it places reliance and assessing all risks related to the Project; and
- (b) subject to Section 9.2(f) and except as set out in Schedule 7 (Real Property), it will not be entitled to and will not make (and will ensure that no Project Contractor or Sub-Contractor makes) any Claim against RAVCO, any RAVCO Indemnified Parties or any Contributing Agencies Indemnified Parties, whether in contract, tort or otherwise including any Claim in damages for extensions of time or for additional payments under this Agreement on the grounds:
 - (1) of any misunderstanding or misapprehension in respect of the Disclosed Data; or

- (2) that incorrect or insufficient information relating to the Disclosed Data was given to it by any Person other than RAVCO,

nor will the Concessionaire be relieved from any obligation imposed on, or undertaken by, it under this Agreement on any such ground.

10. REPRESENTATIVES

10.1 RAVCO's Representative

The following will apply with respect to the appointment and authority of RAVCO's Representative:

- (a) during the Construction Period RAVCO's Representative will be the Person appointed by RAVCO under the Design and Construction Requirements, and during the Operating Period, the Person appointed by RAVCO under the Operation and Maintenance Requirements and Specifications. RAVCO's Representative will have full authority to act on behalf of and bind RAVCO for all purposes of this Agreement. Except as previously notified in writing before such act by RAVCO to the Concessionaire, the Concessionaire and the Concessionaire's Representative will be entitled to treat any act of RAVCO's Representative in connection with this Agreement as being expressly authorized by RAVCO and the Concessionaire and the Concessionaire's Representative will not be required to determine whether any express authority has in fact been given;
- (b) RAVCO's Representative will be entitled at any time by notice to the Concessionaire to authorize any other Person to exercise the functions and powers of RAVCO delegated to him pursuant to this Section 10.1, either generally or specifically. Any act of any such Person will, for the purposes of this Agreement, constitute an act of RAVCO's Representative and all references to "RAVCO's Representative" in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of such Person's authority. For all purposes relating to the Airport Connector, the Concessionaire acknowledges that all functions and powers of the RAVCO Representative will be delegated to a nominee of YVR; and
- (c) RAVCO may by notice to the Concessionaire change RAVCO's Representative. Where RAVCO wishes to do so it will by notice to the Concessionaire propose a substitute for approval, taking into account the need for liaison and continuity in respect of the Project. Such appointment will be subject to the approval of the Concessionaire (not to be unreasonably withheld or delayed).

10.2 Concessionaire's Representative

The following will apply with respect to the appointment and authority of the Concessionaire's Representative:

- (a) during the Construction Period, the Concessionaire's Representative will be the Person appointed by the Concessionaire under the Design and Construction Requirements and during the Operating Period, the Person appointed by the Concessionaire under the Operation and Maintenance Requirements and Specifications. The Concessionaire's Representative will have full authority to act on behalf of and bind the Concessionaire for all purposes of this Agreement. Except as previously notified in writing before such act by the Concessionaire to RAVCO, RAVCO and RAVCO's Representative will be entitled to treat any act of the Concessionaire's Representative in connection with this Agreement as being expressly authorized by the Concessionaire and RAVCO and RAVCO's Representative will not be required to determine whether any express authority has in fact been given;
- (b) Concessionaire's Representative will be entitled at any time by notice to RAVCO to authorize any other Person to exercise the functions and powers of the Concessionaire delegated to him pursuant to this Section 10.2, either generally or specifically. Any act of any such Person will, for the purposes of this Agreement, constitute an act of the Concessionaire's Representative and all references to the "Concessionaire's Representative" in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of such Person's authority; and
- (c) the Concessionaire may by notice to RAVCO change the Concessionaire's Representative. Where the Concessionaire wishes to do so it will by notice to RAVCO propose a substitute for approval, taking into account the need for liaison and continuity in respect of the Project. Such appointment will be subject to the approval of RAVCO (not to be unreasonably withheld or delayed).

11. INSURANCE, DAMAGE AND DESTRUCTION

11.1 Insurance

The Concessionaire will obtain and maintain insurance subject to, and in accordance with Schedule 12 (Insurance Requirements) provided that nothing in this Agreement will oblige the Concessionaire to take out insurance in respect of a risk which has become Uninsurable.

11.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided, the partial destruction or damage or complete destruction by fire or other casualty of the System will not terminate this Agreement or entitle the

Concessionaire to surrender possession of the System or to demand any increase in any amounts payable to the Concessionaire under this Agreement.

11.3 Concessionaire's Obligations - Damage or Partial Destruction

If the System is damaged or partially destroyed, the Concessionaire will repair, replace or restore any part of the System so damaged or destroyed, subject to:

- (a) applicable Laws; and
- (b) RAVCO agreeing to pay to the Concessionaire the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage (which for greater certainty is the full amount of coverage prior to any deductibles for which the Concessionaire is responsible pursuant to Schedule 12 (Insurance)) required under this Agreement for such risk.

11.4 Concessionaire's Obligations - Complete or Substantial Destruction

If the System is completely or substantially destroyed, the Concessionaire will, as soon as practicable and before undertaking any material remedial work, use commercially reasonable efforts to provide RAVCO with a report (the "**Restoration Report**") as to the extent of the damage and the cost to repair, replace or restore the System. Thereafter, unless a party elects to terminate this Agreement in accordance with the provisions of Section 11.6, 11.7, 11.8 or 11.9, the Concessionaire will repair, replace or restore the System, subject to applicable Laws.

11.5 Costs of Restoration Report

To the extent not covered by the insurance required to be maintained under this Agreement, the costs incurred by the Concessionaire in preparing a Restoration Report will be paid for as follows:

- (a) all costs of the Concessionaire's own staff and employees, and the staff and employees of a Project Contractor, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Project, will be paid for by the Concessionaire; and
- (b) RAVCO will reimburse the Concessionaire for all out of pocket costs the Concessionaire reasonably and necessarily incurs to prepare a Restoration Report.

11.6 RAVCO Election Not to Reinstate On Complete or Substantial Destruction

RAVCO may, at its option by notice to the Concessionaire within 30 days of receipt of the Restoration Report, terminate this Agreement and pay compensation to the Concessionaire in accordance with Section 1 of Schedule 13 (Compensation on Termination).

11.7 Insufficient Insurance

If:

- (a) the System is completely or substantially destroyed;
- (b) the cost to repair, replace or restore the System exceeds the maximum amount of insurance coverage (which for greater certainty is the full amount of coverage prior to any deductibles for which the Concessionaire is responsible pursuant to Schedule 12 (Insurance)) required under this Agreement for the risk that caused the destruction; and
- (c) neither RAVCO nor the Concessionaire have agreed to pay the amount by which the cost to repair, replace or restore the System exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

at any time on or after 30 days after delivery of the Restoration Report to RAVCO, either party may elect, by notice to the other party, to terminate this Agreement, in which case RAVCO will pay compensation to the Concessionaire in accordance with Section 4 of Schedule 13 (Compensation on Termination).

11.8 Economic Reinstatement Test During Construction

If:

- (a) material damage to the System occurs prior to the Service Commencement Date; and
- (b) there are insufficient funds freely available from all sources (including debt, equity, letters of credit, other construction security, insurance proceeds, contributions agreed to be made by RAVCO pursuant to this Section 11 or otherwise) to allow the Concessionaire to reinstate and achieve Service Commencement while meeting its debt service requirements under the Facility Agreement dated the date hereof among the Concessionaire, the General Partner, the Senior Lenders and others (the "Facility Agreement"); or
- (c) on the forecast Service Commencement Date following such reinstatement there would be a breach of the Loan Life Cover Ratio test contained in clause [16.23] of the Facility Agreement,

the Concessionaire may elect, by notice to RAVCO, to terminate this Agreement in which case RAVCO will pay compensation to the Concessionaire in accordance with Section 4 of Schedule 13 (Compensation on Termination).

11.9 Uncollectible Insurance Receivables

If at any time while the Concessionaire is relieved of its obligations under Sections 11.3 or 11.4 by reason of the Relief Event described in Section (p) of the definition of Relief Event:

- (a) the Concessionaire has complied with its obligations hereunder with respect to such Relief Event; and
- (b) notwithstanding such compliance by the Concessionaire collection of the applicable Insurance Receivables is not possible using all commercially reasonable efforts,

either party may elect, by notice to the other party, to terminate this Agreement, in which case RAVCO will pay compensation to the Concessionaire in accordance with Section 4 of Schedule 13 (Compensation on Termination).

11.10 Application of Insurance Proceeds If No Termination

Unless a party has elected to terminate this Agreement pursuant to Section 11.6, 11.7, 11.8 or 11.9, RAVCO and the Concessionaire will cause all:

- (a) Insurance Proceeds which either has received;
- (b) Insurance Proceeds to which either is entitled to receive; and
- (c) amounts which RAVCO has agreed to pay under Sections 11.3(b) or which RAVCO or the Concessionaire has agreed to pay under 11.7(c),

to be applied to the replacement, repair or reconstruction of the System in accordance with the terms of this Agreement.

11.11 Application of Insurance Proceeds In Case of Termination

If a party has elected to terminate this Agreement pursuant to Section 11.6, 11.7, 11.8 or 11.9:

- (a) any Insurance Proceeds received prior to the Transfer Date by either the Concessionaire or RAVCO in respect to damage to the System will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to RAVCO;
- (b) on the Transfer Date, the Concessionaire will assign to RAVCO the benefit of all Insurance Receivables.

11.12 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the System or any part thereof pursuant to the provisions of Sections 11.3 or 11.4 will be made or done in compliance with the Requirements and Specifications, subject to any agreement made between RAVCO and the Concessionaire pursuant to Section 18 to revise the Requirements and Specifications as they pertain to any replacement, repaired or reconstructed System.

11.13 Mitigation

The Concessionaire and RAVCO will take all commercially reasonable steps to mitigate the effects of any risks or Claims covered by this Section 11 (including minimizing the amount of any costs and expenses which might result).

11.14 Determination of Uninsurable Risks

If at any time a party determines that a risk covered by the insurance required to be obtained and kept in force under this Agreement has or will become Uninsurable then:

- (a) that party will notify the other party within 5 Business Days of such determination; and
- (b) if both parties agree, or it is determined under the Dispute Resolution Procedure that the risk is, or will become, Uninsurable and that a board of directors of the General Partner of the Concessionaire, acting reasonably, would cease to operate the System as a result of that risk becoming Uninsurable, the parties will meet to discuss the means by which the risk should be managed (including considering the issue of self-insurance by either party).

11.15 Non-Agreement on Uninsurable Risk

Subject to Section 11.17, if the parties cannot agree as to how to manage any risk which has become Uninsurable, then this Agreement will continue and, unless the other party agrees in writing, the party responsible for procuring the insurance to cover such Uninsurable risk will continue to approach the insurance market on a regular basis (and in any event at intervals of not more than six months) and use all reasonable efforts to obtain insurance to cover as much or all of such Uninsurable risk as can be insured in the available insurance market from time to time.

11.16 Indemnity During Period of Uninsurability

If:

- (a) and for as long as a risk is Uninsurable, other than the risk of a latent defect in the Work;
- (b) the Concessionaire or RAVCO has given notice pursuant to Section 11.14(a) in respect of such risk; and
- (c) there is an occurrence of an event of such risk,

RAVCO will pay to the Concessionaire in accordance with Section 10.2 of Schedule 11 (Payments) an amount equal to the amount of any Insurance Proceeds that would have been available to the Concessionaire had such risk not become Uninsurable and determined in accordance with the policy of insurance which is no longer available, provided that such event occurs during the period:

- (d) commencing on the later of the date:
 - (1) such risk became Uninsurable; and
 - (2) notice was given pursuant to 11.14(a); and

- (e) ending on the Transfer Date.

11.17 RAVCO Termination for Uninsurability

If and for so long as a risk is, or will become, Uninsurable, other than the risk of a latent defect in the Work, and the agreement or determination described in Section 11.14(b) continues to apply, RAVCO may give notice of termination of this Agreement and pay to the Concessionaire an amount equal to the amount set out in:

- (a) Section 1 of Schedule 13 (Compensation on Termination) to the extent the risk was Uninsurable due to the wrongful or negligent action or omission of RAVCO;
- (b) Section 3 of Schedule 13 (Compensation on Termination) to the extent the risk was Uninsurable due to the wrongful or negligent action or omission of the Concessionaire; or
- (c) in all other circumstances Section 4 of Schedule 13 (Compensation on Termination),

and upon payment of such amount in accordance with Section 7 of Schedule 13 (Compensation on Termination), this Agreement will forthwith terminate.

12. INDEMNITIES

12.1 Concessionaire's Indemnities to RAVCO

Subject to the terms of this Agreement (including, for greater certainty, Section 4.4), the Concessionaire will indemnify and keep RAVCO, the RAVCO Indemnified Parties and the Contributing Agency Indemnified Parties indemnified at all times from and against all Direct Losses that any of them may sustain in connection with:

- (a) any Claim for, or in respect of, the death or personal injury of any person arising out of, or in the course of, the Work or the Operation and Maintenance Services, except to the extent caused (or contributed to) by breach of any express provision of this Agreement by RAVCO or any negligent act, omission or wilful misconduct of RAVCO or any Person for whom RAVCO is responsible under Section 4.4;
- (b) any Claim made by one or more third parties (including claims for direct economic loss) arising by reason of any:
 - (1) negligent act or omission of;
 - (2) wilful misconduct of; or
 - (3) breach of any of the express provisions of:
 - (A) this Agreement by; or

- (B) any document, instrument or agreement delivered to RAVCO as specifically required by the terms of this Agreement by,

the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3;

- (c) any loss of or physical damage to property or assets of RAVCO or any other Person arising by reason of any act or omission of the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3, except to the extent caused (or contributed to) by breach of any express provision of this Agreement by RAVCO or any negligent act, omission or wilful misconduct of RAVCO or any Person for whom RAVCO is responsible under Section 4.4;
- (d) any Claim by one or more third parties arising by reason of any aspect of the System infringing, or being alleged to infringe, the Intellectual Property rights of any Person, except to the extent such infringement was caused (or contributed to) by breach of any express provision of this Agreement by RAVCO or any negligent act, omission or wilful misconduct of RAVCO or any Person for whom RAVCO is responsible under Section 4.4;
- (e) the Hazardous Substances for which the Concessionaire is responsible pursuant to Section 8.1 of Schedule 7 (Real Property);
- (f) non-compliance by the Concessionaire with any of its obligations under any Law or to RAVCO under this Agreement or any document, instrument or agreement delivered to RAVCO as specifically required by the terms of this Agreement; and
- (g) any breach of any representation or warranty of the Concessionaire to RAVCO under this Agreement or any document, instrument or agreement delivered to RAVCO as specifically required by the terms of this Agreement.

12.2 Concessionaire's Indemnity to the Province and Canada

In addition to the indemnities set out in Section 12.1, the Concessionaire will indemnify and keep each of the Province and Canada indemnified at all times from and against any Direct Losses and Indirect Losses sustained by either the Province or Canada arising directly or indirectly from the Design, Construction, Operation, Maintenance and Repair of the System.

12.3 RAVCO's Indemnities to the Concessionaire

Subject to the terms of this Agreement (including, for greater certainty, Section 4.3), RAVCO will indemnify and keep the Concessionaire and the Concessionaire Indemnified Parties indemnified at all times from and against all Direct Losses (except in the case of Section 12.3(h), in which case it will be all losses) that any of them may sustain in connection with:

- (a) any Claim for, or in respect of, the death or personal injury of any Person arising from the acts, defaults, omissions, breaches or negligence of RAVCO or

any Person for whom RAVCO is responsible under Section 4.4, except to the extent caused (or contributed to) by breach of any express provision of this Agreement by the Concessionaire or any negligent act, omission or wilful misconduct of the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3;

- (b) any Claim made by one or more third parties (including claims for direct economic loss) arising by reason of any:
 - (1) negligent act or omission of;
 - (2) wilful misconduct of; or
 - (3) breach of any of the express provisions of:
 - (A) this Agreement by; or
 - (B) any document, instrument or agreement delivered to the Concessionaire as specifically required by the terms of this Agreement by,

RAVCO or any Person for whom RAVCO is responsible under Section 4.4;

- (c) any loss of or physical damage to the System or to the property or assets of the Concessionaire or any other Person, including any Project Contractor or Sub-Contractor, arising by reason of any act or omission of RAVCO or any Person for whom RAVCO is responsible under Section 4.4, except to the extent caused (or contributed to) by breach of any express provision of this Agreement by the Concessionaire or any negligent act, omission or wilful misconduct of the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3;
- (d) any Claim after the Transfer Date by a licensor of any Project Intellectual Property arising out of any breach by RAVCO or any negligent act, omission or wilful misconduct of RAVCO or any Person for whom RAVCO is responsible under Section 4.4 of the terms of the license agreement pursuant to which the Concessionaire incorporated such Intellectual Property into the System, except to the extent such infringement was caused (or contributed to) by breach of any express provision of this Agreement by the Concessionaire or any negligent act, omission or wilful misconduct of the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3;
- (e) any Undisclosed Environmental Liabilities;
- (f) non-compliance by RAVCO with any of its obligations under any Law or to the Concessionaire under this Agreement or any document, instrument or agreement delivered to the Concessionaire as specifically required by the terms of this Agreement;

- (g) any breach of any representation or warranty of RAVCO to the Concessionaire under this Agreement or any document, instrument or agreement delivered to the Concessionaire as specifically required by the terms of this Agreement; and
- (h) any Claims made by the Province or Canada in connection with the indemnity set out in Section 12.2 to the extent such claims:
 - (1) are for Indirect Losses; or
 - (2) did not arise as a result of:
 - (A) the negligent act or omission of;
 - (B) wilful misconduct of; or
 - (C) breach of any of the express provisions of:
 - (i) this Agreement by; or
 - (ii) any document, instrument or agreement delivered to RAVCO as specifically required by the terms of this Agreement by,

the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3.
- (i) any Claim of right, title or jurisdiction in, to, over or affecting any:
 - (1) of the Real Property Interests; or
 - (2) waterways over, in or under which the System is constructed,

made by any aboriginal peoples arising solely by virtue of their status as aboriginal peoples, except to the extent caused (or contributed to) by breach of any express provision of this Agreement by the Concessionaire or any negligent act, omission or wilful misconduct of the Concessionaire or any Person for whom the Concessionaire is responsible under Section 4.3;
- (j) compliance with the Municipal Access Agreements if and to the extent such compliance results in:
 - (1) costs in respect of the Project; or
 - (2) liabilities to the Cities,

that the Concessionaire or any Concessionaire Indemnified Party would not otherwise have been responsible for under this Agreement arising as a result of inconsistencies in respect of the meaning of:

- (A) "Hazardous Substance" in this Agreement and "Contaminants" in the Municipal Access Agreements;
- (B) "Laws" in this Agreement and "Law" in the Municipal Access Agreements; and
- (C) "Direct Losses" in this Agreement and "Losses" in the Municipal Access Agreements.

12.4 Conduct of Claims

This Section 12.4 will apply to the conduct of Claims made by a third Person against a party having, or claiming to have, the benefit of an indemnity under this Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the **"Beneficiary"** and the party from whom the indemnity is sought is referred to as the **"Indemnifier"**. Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement :

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any Claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 20 Business Days of receipt thereof;
- (b) subject to Sections 12.4(d), 12.4(e) and 12.4(f), on the giving of a notice by the Beneficiary pursuant to Section 12.4(a), if it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not less than all) of the liability arising out of the Claim, the Indemnifier will (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim;
- (c) in defending any Claim described in Section 12.4(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such Claim and, if it is determined that the Beneficiary is entitled to indemnification by the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity from the Indemnifier;
- (d) with respect to any Claim conducted by the Indemnifier pursuant to Section 12.4(b):
 - (1) the Indemnifier will keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim; and

- (2) the Indemnifier will not pay or settle such Claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations if:
 - (1) the Indemnifier is not entitled to take conduct of the Claim in accordance with Section 12.4(b) ; or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within 20 Business Days of the notice from the Beneficiary under Section 12.4(a) or notifies the Beneficiary that it does not intend to take conduct of the Claim; or
 - (3) the Indemnifier fails to comply in any material respect with the provisions of Section 12.4(d) above.

In the case of (3) the Beneficiary may pay or settle any Claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Beneficiary will not pay or settle such Claims without the prior consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;

- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or appeal of any Claim, or of any incidental negotiations, to which Section 12.4(b) above applies. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such Claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. If the Beneficiary gives any notice pursuant to this Section 12.4(f) (for the sake of clarity, for reasons other than as provided in Sections 12.4(e)(2) or 12.4(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 12.1, 12.2, or 12.3 as the case may be, and, without prejudice to any accrued liabilities, any liability under its Indemnity given pursuant to Section 12.4(b) in respect of such Claim;
- (g) if the Indemnifier pays to the Beneficiary an amount in respect of any indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Beneficiary will forthwith repay to the Indemnifier the lesser of:
 - (1) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering such sum; and

- (2) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity

provided that there will be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including Indirect Losses); and

- (h) in response to any Claim of infringement or alleged infringement of the Intellectual Property rights of any Person, the Concessionaire may replace such infringing or allegedly infringing part of the System provided that:
 - (1) the replacement is performed without additional cost to RAVCO; and
 - (2) the replacement has at least equal quality performance capabilities when used in conjunction with the System.

13. LIMITS ON LIABILITY AND REMEDIES

13.1 No Consequential Damages

Unless specifically provided otherwise, the indemnities under this Agreement will not apply to, and neither party will be entitled to claim damages for breach of this Agreement, in tort, contract or on any other basis whatsoever, to the extent that any loss claimed by either party, howsoever caused, is for Indirect Losses suffered or allegedly suffered by that party. Notwithstanding the foregoing, Direct Losses of the Concessionaire arising under a Project Contract will not be excluded from such a Claim solely by reason of this Section 13.1.

13.2 No Double Compensation

Notwithstanding any other provision of this Agreement, neither party will be entitled to recover compensation or make a Claim under this Agreement or any other agreement in relation to the Project in respect of any loss that it has incurred (or any failure of the other party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this Agreement or otherwise.

13.3 Concessionaire's Remedies

Except as set out in Section 28 or otherwise specifically provided in this Agreement:

- (a) all of the Concessionaire's remedies under or in relation to this Agreement, whether in contract, tort or otherwise, will only be against RAVCO;
- (b) the Concessionaire will not have any rights, causes of action or remedies against the RAVCO Indemnified Parties or the Contributing Agencies Indemnified Parties with respect to their role or responsibilities relating to the Project, the System or this Agreement; and

- (c) nothing in this Agreement will give rise to any contract between the Concessionaire and any of the RAVCO Indemnified Parties or the Contributing Agencies Indemnified Parties and no contract will take effect except by written instrument signed by the applicable parties.

13.4 RAVCO's Remedies

Unless specifically provided otherwise:

- (a) all of RAVCO's remedies under or in relation to this Agreement, whether in contract, tort or otherwise, will only be against the Concessionaire; and
- (b) RAVCO will not have any rights, causes of action or remedies against the Concessionaire's Indemnified Parties with respect to their role or responsibilities relating to the Project, the System or this Agreement.; and
- (c) nothing in this Agreement will give rise to any contract between RAVCO and any of the Concessionaire Indemnified Parties and no contract will take effect except by written instrument signed by the applicable parties;
- (d) whether or not the Partners maintain their status as limited partners of a limited partnership, the obligations of and rights and remedies against the Concessionaire will be performed, satisfied and paid out of and recourse will be limited to, and enforcement taken against, only the undertaking and property of the Concessionaire and no other recourse will be had, judgment issued or execution or other process levied against the Partners or any of them or against any of the assets of the respective Partners other than their respective interest in the Concessionaire and the Project.

13.5 Concessionaire's Rights and Benefits

RAVCO and GVTA acknowledge that the Concessionaire will grant to the Project Contractors and Sub-Contractors the right to participate in the Concessionaire's rights and benefits under this Agreement, including in respect of any Relevant Events, Relief Events and events of Force majeure, (collectively the "Concessionaire's Rights and Benefits") in consideration of the Project Contractors and Sub-Contractors assuming and performing certain of the Concessionaire's obligations under this Agreement. RAVCO and GVTA agree that:

- (a) any circumstance affecting any Project Contractor or a Sub-Contractor which, if such circumstance affected the Concessionaire would have given rise to a claim in respect of the Concessionaire's Rights and Benefits, will for the purpose of this Agreement be deemed a circumstance affecting the Concessionaire in respect of which it may claim the Concessionaire's Rights and Benefits; and
- (b) any amount claimed by the Project Contractors or Sub-Contractor in respect of such circumstance will be deemed an amount claimed by the Concessionaire hereunder,

Provided that any such claims will be made and administered by the Concessionaire. In no circumstance will RAVCO's and GVTA's liability under this Section 13.5 be more than it would have been if the Concessionaire had been directly affected by the circumstance and the amount claimed had been a direct claim by the Concessionaire.

14. COMPENSATION EVENTS

14.1 Occurrence of a Compensation Event

If the occurrence of a Compensation Event:

- (a) delays or disrupts any of the Work;
- (b) adversely affects the ability of the Concessionaire to perform any of its obligations under this Agreement; or
- (c) results in the Concessionaire incurring any Direct Losses,

then the Concessionaire may apply for relief from its obligations or claim compensation under this Agreement or both in accordance with this Section 14. The Concessionaire will use commercially reasonable efforts to mitigate the consequences of any Compensation Event provided that in doing so it will not be obligated to incur material costs which RAVCO has not agreed to pay.

14.2 Obtaining Compensation or Relief

To obtain relief or claim compensation as provided under Section 14.1 after the occurrence of a Compensation Event, the Concessionaire must:

- (a) as soon as practicable, and in any event within 7 days after it Has Knowledge that the Compensation Event has caused or is likely to cause any of the consequences referred to in Section 14.1, give to RAVCO a notice ("Compensation Notice") summarizing, to the extent the Concessionaire Has Knowledge, the Compensation Event and consequences, and the nature and amount of relief or claim requested;
- (b) within 14 days of receipt by RAVCO of a Compensation Notice, to the extent the Concessionaire Has Knowledge, give to RAVCO:
 - (1) additional details, including available supporting documentation, in support of the requested relief or claim;
 - (2) a detailed breakdown of all Direct Losses incurred by the Concessionaire as a result of the Compensation Event; and
- (c) notify RAVCO if at any time it receives or becomes aware of any further information relating to the Compensation Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading;

- (d) demonstrate to the reasonable satisfaction of RAVCO that:
- (1) the Concessionaire could not have avoided such occurrence or the consequences of the Compensation Event by steps which it might reasonably be expected to have taken;
 - (2) the Compensation Event caused the Concessionaire to incur a Direct Loss, a delay in the Approved Project Schedule or the need for relief from other obligations under this Agreement;
 - (3) the claimed Direct Losses, delay or relief from obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Concessionaire without incurring material expenditure which RAVCO had not agreed to pay; and
 - (4) the Concessionaire is using commercially reasonable efforts to perform its obligations under this Agreement without incurring any material expenditure which RAVCO had not agreed to pay.

14.3 Capital Expenditure, Direct Losses and Other Relief

Subject to Sections 14.5(a)(1) and 14.7, if Section 14.1 applies and the Concessionaire has complied with Section 14.2:

- (a) RAVCO will pay to the Concessionaire, in accordance with Section 21, an amount equal to the amount of any Capital Expenditures or Direct Losses incurred by the Concessionaire as a direct result of a Compensation Event;
- (b) the Approved Project Schedule, including the Scheduled Service Commencement Date, will be amended, the Service Commencement Deadline will be postponed and the Expiry Date and the Term will be extended by such time as RAVCO and the Concessionaire agree is reasonable in the circumstances to take account of the likely effect of the delay which will be caused by the Compensation Event; and
- (c) RAVCO will not be entitled to exercise its right to terminate this Agreement under Section 23.5(b) or 23.7 as a result of any failure by or default of the Concessionaire arising from such Compensation Event.

14.4 Payments

Nothing in Section 14.3 will affect any entitlement of RAVCO to make any deductions from any amounts payable to the Concessionaire in accordance with this Agreement during the period in which the Compensation Event is subsisting, provided, however, to the extent that the Concessionaire is prevented from performing its obligations during the Operating Period by reason of the Compensation Event, the Operating Payments will be calculated as if the Compensation Event had not occurred based on the reasonably expected performance of the

Concessionaire, including consideration of the Concessionaire's past performance (including previous rectification performance) under this Agreement, less the aggregate of:

- (a) Avoidable Costs;
- (b) Insurance Proceeds in respect of such Compensation Event; and
- (c) 5% (the "**Compensation Event Holdback**") of each Operating Payment that would otherwise have been reduced by the Compensation Event.

14.5 Compensation Event Holdback

If and when the Concessionaire:

- (a) delivers to RAVCO a certificate of an officer of the Concessionaire confirming:
 - (1) that the Concessionaire has used all commercially reasonable efforts to collect all Insurance Receivables and to pursue all Claims available to the Concessionaire in respect of a specified Compensation Event or that no such Insurance Receivables or Claims were available; and
 - (2) the aggregate amount recovered by the Concessionaire on account of such Insurance Receivables, if any, and such Claims, net of reasonable out of pocket costs related to such recovery; and
- (b) pays to RAVCO the amount set out in such certificate.

or, at the option of the Concessionaire, pays to RAVCO the full amount of such Insurance Receivables and Claims, RAVCO will pay to the Concessionaire an amount equal to the Compensation Event Holdback applicable to that Compensation Event plus Interest.

14.6 Delay in Notification or Failure to Mitigate

If the Compensation Notice or any required information is provided by the Concessionaire to RAVCO after the dates referred to in Section 14.2, or if the Concessionaire failed or refused to use commercially reasonable efforts to mitigate the effects of the Compensation Event as required under Section 14.1, then the Concessionaire will not be entitled to any extension of time, compensation or relief from its obligations under this Agreement to the extent that the extension of time, amount of such compensation or required relief was increased as a result of such delay in providing such information, or the failure to mitigate, or to the extent RAVCO has lost the opportunity to implement measures to reduce costs provided that if mitigation measures require material expenditure, the Concessionaire will so advise RAVCO and will not be obliged to carry out such measures unless RAVCO confirms that RAVCO will pay such expenditures.

14.7 Disputes

If there is a Dispute as to the amount of any compensation, the extension of time or relief from the Concessionaire's obligations under this Agreement arising from a Compensation Event, or RAVCO disagrees that a Compensation Event has occurred:

- (a) the parties will resolve the matter in accordance with the Dispute Resolution Procedure;
- (b) RAVCO will pay any undisputed amounts to the Concessionaire in accordance with Section 21, but any disputed amounts will not be payable until the Dispute is resolved as aforesaid and Interest will accrue and be payable on such amount calculated from the time such amount would have been payable in the absence of a Dispute until it is paid; and
- (c) RAVCO will not be entitled to exercise its right to terminate this Agreement under Section 23.5(b) or 23.7 as a result of any failure or default of the Concessionaire arising from such Disputed event unless and until the Dispute has been resolved in favour of RAVCO.

15. RELIEF EVENTS

15.1 Occurrence of a Relief Event

If the occurrence of a Relief Event:

- (a) delays or disrupts the Work; or
- (b) adversely affects the ability of the Concessionaire to perform any of its obligations under this Agreement,

then the Concessionaire may obtain in accordance with Sections 15.2 and 15.3:

- (c) a postponement of the Service Commencement Deadline and an extension of the Term if the Relief Event has delayed the Scheduled Service Commencement Date; and
- (d) relief from its obligations hereunder (including Claims for damages made by RAVCO in connection with any delays arising directly from such Relief Event) to the extent required as a consequence of such Relief Event.

15.2 Obtaining Relief

To obtain the relief described in Sections 15.1(c) and 15.1(d), after the occurrence of a Relief Event, the Concessionaire must:

- (a) as soon as practicable, and in any event within 7 days after it Has Knowledge that the Relief Event has caused or is likely to cause delay or adversely affect the ability of the Concessionaire to perform its other obligations, give to RAVCO a notice of its Claim for relief (a "Relief Notice") from its obligations under this Agreement including full details (to the extent the Concessionaire then Has Knowledge) of the nature of the Relief Event, the date of occurrence and its likely duration;

- (b) within 14 days of receipt by RAVCO of the Relief Notice, give full details (to the extent the Concessionaire then Has Knowledge) of the relief claimed;
- (c) notify RAVCO if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading; and
- (d) demonstrate to the reasonable satisfaction of RAVCO that:
 - (1) the Concessionaire could not have avoided such occurrence or consequences by steps which it might reasonably be expected to have taken;
 - (2) the Relief Event will cause a delay in the Approved Project Schedule or the need for relief from other obligations under this Agreement;
 - (3) the claimed delay or relief from obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Concessionaire without incurring material expenditure which RAVCO had not agreed to pay; and
 - (4) the Concessionaire is using commercially reasonable efforts to perform its obligations under this Agreement without incurring any material expenditure which RAVCO had not agreed to pay.

15.3 Service Commencement Deadline, Term and Payments

Subject to Section 15.6 and 15.7, if Section 15.1 applies and the Concessionaire has complied with its obligations in Section 15.2:

- (a) the Approved Project Schedule, including the Scheduled Service Commencement Date, will be amended, the Service Commencement Deadline will be postponed and the Expiry Date and the Term will be extended by such time as RAVCO and the Concessionaire agree is reasonable in the circumstances to take account of the likely effect of the delay which will be caused by the Relief Event; and
- (b) RAVCO will not be entitled to exercise its right to terminate this Agreement under Section 23.5(b) or 23.7 as a result of any failure by or default of the Concessionaire arising from such Relief Event.

15.4 Payments

Nothing in Section 15.3 will affect any entitlement of RAVCO to make any deductions from any amounts payable to the Concessionaire in accordance with this Agreement during the period in which the Relief Event is subsisting, provided, however, to the extent that the Concessionaire is prevented from performing its obligations during the Operating Period by reason of the Relief Event, the Operating Payments will be calculated as if the Relief Event had not occurred based

on the reasonably expected performance of the Concessionaire, including consideration of the Concessionaire's past performance (including previous rectification) performance under this Agreement, less the aggregate of:

- (a) Avoidable Costs;
- (b) Insurance Proceeds in respect of such Relief Event; and
- (c) 5% (the "Relief Event Holdback") of each Operating Payment that would otherwise have been reduced by the Relief Event.

15.5 Relief Event Holdback

If and when the Concessionaire:

- (a) delivers to RAVCO a certificate of an officer of the Concessionaire confirming:
 - (1) that the Concessionaire has used all commercially reasonable efforts to collect all Insurance Receivables and to pursue all Claims available to the Concessionaire in respect of a specified Relief Event or that no such Insurance Receivables or Claims were available; and
 - (2) the aggregate amount recovered by the Concessionaire on account of such Insurance Receivables and such Claims, net of reasonable out of pocket costs related to such recovery; and
- (b) pays to RAVCO the amount set out in such certificate,

or, at the option of the Concessionaire, pays to RAVCO the full amount of such Insurance Receivables or such Claims, RAVCO will pay to the Concessionaire an amount equal to the Relief Event Holdback applicable to that Relief Event plus Interest.

15.6 Delay in Notification or Failure to Mitigate

If the Relief Notice or any required information is provided by the Concessionaire to RAVCO after the dates referred to in Section 15.2, or if the Concessionaire failed or refused to use commercially reasonable efforts to mitigate the effects of the Relief Event as required under Section 15.2(d)(3), then the Concessionaire will not be entitled to any extension of time or relief from its obligations under this Agreement to the extent that the extension of time, or required relief was increased as a result of such delay in providing such information, or the failure to mitigate, or to the extent RAVCO has lost the opportunity to implement measures to reduce costs provided that if mitigation measures require material expenditure, the Concessionaire will so advise RAVCO and will not be obliged to carry out such measures unless RAVCO confirms in writing that RAVCO will pay such expenditures.

15.7 Disputes

If there is a Dispute as to the extension of time or relief from the Concessionaire's obligations under this Agreement arising from a Relief Event, or if RAVCO disagrees that a Relief Event has occurred:

- (a) the parties will resolve the matter in accordance with the Dispute Resolution Procedure; and
- (b) RAVCO will not be entitled to exercise its right to terminate this Agreement under Section 23.5(b) or 23.7 as a result of any failure or default of the Concessionaire arising from such Disputed event unless and until the Dispute has been resolved in favour of RAVCO.

16. FORCE MAJEURE

16.1 Relief from Obligations

Subject to Section 16.2, either party may, in accordance with this Section 16, claim relief from liability under this Agreement to the extent that by reason of Force Majeure it is not able to perform any of its material obligations under this Agreement, provided that no such relief may be claimed in respect of any obligation to make Payments or pay other amounts that may from time to time become owing hereunder. To the extent that the Concessionaire is prevented from performing any of its material obligations during the Operating Period by reason of Force Majeure, the Operating Payments will be calculated as if the Force Majeure had not occurred, net of any Avoidable Costs and Insurance Proceeds based on the reasonably expected performance of the Concessionaire, including the Concessionaire's past performance under this Agreement.

16.2 Mitigation

If a party is (or claims to be) affected by an event of Force Majeure:

- (a) the party will take all reasonable steps to mitigate the consequences of such an event upon the performance of any of its material obligations under this Agreement (provided that in doing so it will not be obligated to incur material expenditure which the other party has not agreed to pay), resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all commercially reasonable efforts to remedy its failure to perform; and
- (b) the party will not be relieved from liability under this Agreement to the extent that it did not, or was not able to, perform its obligations under this Agreement due to its failure to comply with Section 16.2(a).

16.3 Initial Notice

The party claiming relief will give notice to the other party as soon as practicable (making all reasonable efforts to do so within 5 Business Days) after it Has Knowledge of the relevant event of Force Majeure. Such initial notice will give sufficient details to identify the particular event claimed to be an event of Force Majeure.

16.4 Subsequent Notice

The party claiming relief will deliver a subsequent notice to the other party as soon as practicable (making all reasonable efforts to do so within a further 5 Business Days) which will contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the party to perform, the action being taken in accordance with Section 16.2, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it or its effects. If, following the issue of any such notice, the party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (or any failure to perform), it will submit such further information to the other party as soon as reasonably possible.

16.5 Notice of Resumption

The party claiming relief will notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.

16.6 Equitable Modifications

The parties will endeavour to agree on modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure (including, for greater certainty, the addition of terms compensating the Concessionaire for the financial consequences of the event of Force Majeure), and taking into account any failure by the parties to give notice or implement mitigation measures as required by this Section 16 and if the event of Force Majeure occurs during the Construction Period the Approved Project Schedule will be amended, the Service Commencement Deadline will be postponed and the Term extended by such time as RAVCO and the Concessionaire agree is reasonable in the circumstances taking into account the likely effect of any delay caused by the Force Majeure.

16.7 Termination for Force Majeure

If, in the circumstances referred to in this Section 16, the parties have failed to reach agreement on any modification to this Agreement pursuant to Section 16.6 within 6 months of the date on which the party affected gives notice to the other party in accordance with Section 16.3, either party may at any time afterwards terminate this Agreement by notice to the other party having immediate effect; provided that the effects of the relevant event of Force Majeure continue to prevent either party from performing any material obligation under this Agreement.

17. CHANGE IN LAW

17.1 Change in Law during Term

Subject to Sections 17.5 and 17.7 and the other provisions of this Agreement, if a Change in Law occurs during the Term, the Concessionaire will at its own expense comply with the Change in Law.

17.2 Concessionaire Obligated to Mitigate

The Concessionaire will use all commercially reasonable efforts to mitigate against any adverse effects of a Change in Law provided that in doing so the Concessionaire will not be obligated to incur material expenditure which RAVCO has not agreed to partially or fully pay pursuant to Section 17.5.

17.3 Notification of Change in Law

If a Change in Law occurs or is likely to occur, the Concessionaire will, as soon as it Has Knowledge of it, notify RAVCO in writing of the Change in Law and its anticipated effects on the Project, including:

- (a) any required Change;
- (b) whether in the Concessionaire's opinion any amendments are required to this Agreement, any Project Contract or any Lending Agreement;
- (c) whether relief from compliance with obligations of the Concessionaire under this Agreement, any Project Contract or any Lending Agreement is, in the Concessionaire's opinion, required; and
- (d) any cost savings or additional Capital Expenditures or Direct Losses that directly result from the Change in Law.

17.4 Mitigation

As soon as practicable after receipt of a notice from the Concessionaire under Section 17.3, RAVCO and the Concessionaire will discuss and attempt to agree on the issues referred to in Section 17.3 and any ways in which the Concessionaire can mitigate the effect of the Change in Law, including:

- (a) providing evidence that the Concessionaire has complied with its obligations under Section 17.2;
- (b) demonstrating how any Capital Expenditure or Direct Losses to be incurred or avoided as a result of the Change in Law is being measured in a cost effective manner;

- (c) providing evidence of how the Change in Law has affected the Concessionaire and how it has affected prices charged by any similar businesses undertaking the construction, operation or maintenance of a transit system similar to the System; and
- (d) demonstrating that any expenditure that has been avoided as a result of the Change in Law has been taken into account by the Concessionaire.

17.5 Additional Capital Expenditures and Direct Losses

Subject to Section 17.6, if the Concessionaire incurs increased Capital Expenditures or Direct Losses as a direct result of a Change in Law (taking into account any separate, independent direct causes), the Concessionaire will be responsible for and will pay the lesser of:

- (a) 50% of such increased Capital Expenditures or Direct Losses; and
- (b) \$5 million in the aggregate for all Changes in Law during the Term,

and RAVCO will pay the balance of such increased Capital Expenditures or Direct Losses in accordance with Section 21.

17.6 Increased Expenditures for Discriminatory Changes in Law

If the Concessionaire incurs increased Capital Expenditures or Direct Losses as a result of a Discriminatory Change in Law, RAVCO will pay the amount of such increased Capital Expenditures or Direct Losses in accordance with Section 21.

17.7 Accounting for Savings Resulting from Change in Law

Subject to Section 17.8, if the Concessionaire realizes a decrease in Capital Expenditures or Operating Costs incurred by the Concessionaire as a direct result of a Change in Law (taking into account any separate, independent direct causes), the Concessionaire will pay to RAVCO an amount equal to:

- (a) 50% of the first \$10 million of any such decrease in Capital Expenditures or Operating Costs; and
- (b) 100% of the balance of any such decrease in Capital Expenditures or Operating Costs,

either by adjusting the Operating Payments in accordance with Sections 21.4 to 21.7 or by making a lump sum payment to RAVCO.

17.8 Accounting for Savings Achieved as a Result of a Discriminatory Change in Law

If the Concessionaire incurs a decrease of Capital Expenditures or Operating Costs as a direct result of a Discriminatory Change in Law (taking into account any separate, independent direct causes), the Concessionaire will pay to RAVCO 100% of the amount of such savings.

17.9 Costs and Savings Dispute Resolution

If there is a Dispute as to the amount of any compensation, the extension of time or relief from the Concessionaire's obligations to be determined as a result of a Change in Law pursuant to this Section 17, either party may refer the matter to be resolved pursuant to the Dispute Resolution Procedure, with undisputed amounts being payable as set out herein but any disputed amounts will not be payable until the Dispute is resolved by the parties with Interest calculated from the time such amount would have been payable in the absence of a Dispute until it is paid.

18. RAVCO CHANGES

18.1 Changes Required by RAVCO

RAVCO may, without invalidating this Agreement, require a Change (including a Change applicable to the Construction Scope, Operation and Maintenance Scope or both) at any time during the Term pursuant to and subject to the terms of this Section 18.

18.2 Changes to Airport Connector

With respect to the Airport Connector:

- (a) the Concessionaire acknowledges that RAVCO must obtain the written consent of YVR before implementing any RAVCO Change relating to the Airport Connector;
- (b) RAVCO may on behalf of YVR request a RAVCO Change in respect of the Airport Connector; and
- (c) if RAVCO requests a RAVCO Change in respect of the Airport Connector, RAVCO will be deemed to have represented and warranted to the Concessionaire that it has received such written consent and all other requisite approvals of YVR and the Concessionaire will not be obligated to make any investigation in connection therewith.

18.3 Restrictions on RAVCO Changes

RAVCO will not require, and the Concessionaire may refuse to implement, a RAVCO Change (including RAVCO Changes required with respect to the Airport Connector and Small Works) which:

- (a) would be contrary to Law or good industry practice;
- (b) when aggregated with all other RAVCO Changes would result in an increase in Capital Expenditure by the Concessionaire during the Construction Period under the Construction Contracts of more than 5%;
- (c) would materially adversely affect the credit quality of RAVCO;

- (d) requires a fundamental change in the Requirements and Specifications such that the Concessionaire could not integrate the proposed RAVCO Change into the System on a commercially reasonable basis;
- (e) renders the insurance policies acquired pursuant to Section 11 void or voidable;
- (f) causes any Permit for the Project to be revoked or suspended;
- (g) requires an amendment to a Permit or the issuance of a new Permit which the Concessionaire, after exercising commercially reasonable efforts, would not reasonably be able to obtain or not within a reasonable period of time or would only be able to obtain upon onerous conditions;
- (h) requires a change of any Project Contractor;
- (i) materially and adversely affects the Concessionaire's ability to perform its obligations under this Agreement, including achievement of Service Commencement by the Service Commencement Deadline;
- (j) materially and adversely changes the nature of the Project, including the Project's risk profile;
- (k) materially and adversely affects the Concessionaire's ability to meet the Operating and Maintenance Requirements and Specifications;
- (l) requires the Concessionaire to implement any works or to undertake any activity the principal purpose of which does not relate to the Design, Construction, finance, Operation and Maintenance of the System;
- (m) requires the use or installation of any Equipment independently or in conjunction with any existing Equipment, if such Equipment or its use or installation in such conditions is not:
 - (1) proven technology; and
 - (2) at the time of the proposed RAVCO Change, in use by skilled and experienced operators of rapid transit systems, or otherwise proven to be appropriate and efficient for the purpose through testing in a live environment;
- (n) affects the safety of the System;
- (o) requires the use of any third party proprietary technology or Intellectual Property that is not:
 - (1) specifically provided for in the Requirements and Specifications; and
 - (2) is not available to the Concessionaire on a commercially reasonable basis; or

- (p) would directly or indirectly result in a default by the Concessionaire under the Lending Agreements.

If the Concessionaire, acting reasonably, determines that a RAVCO Change is unacceptable because it contravenes one or more of the above, then the Concessionaire will promptly give notice to RAVCO of its objection, with reasons. If RAVCO disagrees then it may deliver a Dispute Notice to the Concessionaire, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

18.4 Preliminary Change Instruction

RAVCO may at any time during the Term issue to the Concessionaire a Preliminary Change Instruction which sets out the requested RAVCO Change with sufficient detail and information to permit the Concessionaire to prepare and deliver to RAVCO a Change Report.

18.5 Costs of Preparing a Change Report

The Concessionaire will use commercially reasonable efforts to prepare a Change Report, and consider how to accommodate a proposed RAVCO Change in a cost effective manner so as to minimize the cost of a Change and the impact of the Change on the Approved Project Schedule and on Operation and Maintenance. The Change Report will identify all aspects of the Change as they relate to the Construction Scope and Operation and Maintenance Scope. The costs incurred by the Concessionaire in preparing a Change Report will be paid for as follows:

- (a) all costs of the Concessionaire's own staff and employees, and the staff and employees of a Project Contractor, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Work, will be paid for by the Concessionaire; and
- (b) RAVCO will reimburse the Concessionaire for all out of pocket costs (excluding all costs described in Section 18.5(a)) the Concessionaire reasonably and necessarily incurs to prepare a Change Report.

18.6 Concessionaire's Preliminary Change Report

Upon receipt of a Preliminary Change Instruction, and subject to Section 18.3:

- (a) if the Change Report can reasonably be prepared:
 - (1) without the Concessionaire incurring out of pocket costs for which it will claim reimbursement from RAVCO under Section 18.5 of this Agreement, and
 - (2) can reasonably be prepared within 21 days of receipt of the Preliminary Change Instruction, or such longer time as RAVCO may have specified in the Preliminary Change Instruction:

then the Concessionaire will within such time prepare and deliver to RAVCO a Change Report prepared in accordance with Section 18.7;

(b) if the Concessionaire acting reasonably determines that:

- (1) to prepare the Change Report it will need to incur out of pocket costs for which it will be reimbursed by RAVCO, or
- (2) the Change Report cannot reasonably be prepared within the time specified;

then within 10 days of receipt of the Preliminary Change Instruction, or such longer time as RAVCO may specify in the Preliminary Change Instruction, the Concessionaire will provide a preliminary report (a "Preliminary Change Report") setting out a brief written summary of the following:

- (3) a description of the scope of engineering and design, if any, required to implement the RAVCO Change, with reference to both the Construction Scope and Operation and Maintenance Scope;
- (4) a breakdown of the proposed RAVCO Change into the elements that the Concessionaire will need to price separately to prepare a cost estimate described in Section 18.7, including as they relate to both the Construction Scope and Operation and Maintenance Scope;
- (5) an estimate of the time the Concessionaire will reasonably require to complete the engineering and design, if any, and to prepare the Change Report, with reference to both the Construction Scope and Operation and Maintenance Scope; and
- (6) an estimate of the costs, if any, that the Concessionaire will reasonably incur to prepare the Change Report with reference to both the Construction Scope and Operation and Maintenance Scope; and

(c) upon delivery to RAVCO of a Preliminary Change Report:

- (1) RAVCO and the Concessionaire will cooperate with each other and use commercially reasonable efforts to agree on estimates of the reimbursable costs, if any, the approach and the time required for the preparation of the Change Report;
- (2) the Concessionaire will not proceed with the preparation of the Change Report until receipt of written direction from RAVCO; and
- (3) if the Concessionaire does not agree on the costs estimate, approach or time as may be set out in RAVCO's direction for the preparation of the Change Report then the Concessionaire may deliver to RAVCO a Dispute Notice, and the Concessionaire will, without prejudice to its rights with respect to such Dispute, use commercially reasonable efforts to implement the RAVCO direction.

18.7 Concessionaire's Change Report

Subject to Section 18.6, the Concessionaire will deliver to RAVCO a report with reference to the Construction Scope and the Operation and Maintenance Scope containing the information described below, as well as the information required under Section 18.8(c) (a "Change Report"):

- (a) an estimate of all additional costs (including direct, indirect, Capital Expenditures and financing costs) which the Concessionaire reasonably expects to incur and any cost savings which can be made by the Concessionaire on the implementation of the RAVCO Change (providing with such estimate all necessary supporting calculations and information including particulars of additional sums to be paid to a Project Contractor or any of their Affiliates, financiers and professional advisers as reasonably requested and necessary for RAVCO to be able to understand and evaluate the estimate);
- (b) any changes to the Operating Payments that are required to reflect:
 - (1) any proposed increases to the Base Case Equity IRR;
 - (2) any changes to the Lending Agreements that would be required to reflect a change in the risk profile of the Project arising from the RAVCO Change;
- (c) any impact on any amounts payable by RAVCO to the Concessionaire as a result of the implementation of the RAVCO Change, other than the Operating Payments;
- (d) the value attributable to any rights under the Project Contracts the benefit of which would be lost or reduced if the RAVCO Change is implemented;
- (e) any adjustments to the Approved Project Schedule, including any adjustments to the Service Commencement Date, the Service Commencement Deadline and Term, which the Concessionaire will require as a result of the implementation of the RAVCO Change (including details of any corresponding adjustments required by any Project Contractor);
- (f) the Concessionaire's requirements for assistance and resources from RAVCO;
- (g) any additional consents or approvals required, including amendments, if any, of any Permits;
- (h) any impact on the obligations of the Concessionaire under the Project Contracts;
- (i) the extent to which the RAVCO Change would interfere with the Concessionaire's ability to comply with any of its obligations under this Agreement, the Project Contracts and any Permits;

- (j) the identity of the Project Contractors or other contractors (if any) which the Concessionaire intends to engage for the purposes of implementing the RAVCO Change;
- (k) any further effects (including benefits and impairments) which, the Concessionaire foresees as being likely to result from the RAVCO Change;
- (l) any requirements of RAVCO reasonably required to implement the RAVCO Change;
- (m) the Concessionaire's proposal as to how any increased costs to the Concessionaire resulting from the RAVCO Change might be funded; and
- (n) any time periods after which the estimated prices or parts thereof will not be valid, which periods will wherever commercially practicable be of sufficient length to allow RAVCO a reasonable time to consider the Change Report and arrive at an initial evaluation.

18.8 Valuation of RAVCO Changes to Design and Construction

- (a) The value of a RAVCO Change which will solely result in a change to Design or Construction, and which will not affect Operation and Maintenance, will be limited to the actual additional Work or deletion of Work described in the Preliminary Change Instruction calculated in accordance with this Section 18.8 and will not include any allowance for, or take into account, the cost of any Work already included in this Agreement.
- (b) Neither the Concessionaire nor RAVCO will use a Preliminary Change Instruction to correct, or derive benefit from, any errors or omissions in the Design or Construction cost estimates provided by the Concessionaire for any Work forming part of this Agreement.
- (c) A Change Report relating to a change to the Design or Construction will set out the total estimate of costs set out in sufficient detail to allow evaluation by RAVCO, together with a scope of Work of the Change and showing how the Change compares to the scope without the Change if this not discernable by RAVCO. The details shall set out the major elements and components of the additional costs and will include, but not necessarily show separately, unless requested by RAVCO for those parts of the Change Report that cannot by understood by RAVCO, will include:
 - (1) all costs reasonably necessary for and directly associated with the proposed RAVCO Change, including the cost of labour, material, and equipment, together with any quotations from Project Contractors and Sub-contractors;
 - (2) estimated Design costs based on the estimated number of hours reasonably required to perform any additional Design;

- (3) estimated additional costs of site management, including, the supervision of trade foremen, site overheads, and site establishment including, without duplication, any costs related to the Concessionaire's management and oversight of the Project that should reasonably be included in the proposed Change; and
 - (4) an estimate of any effect of the RAVCO Change on Operation and Maintenance costs and financing cost.
- (d) In preparing a Change Report, the Concessionaire will either:
- (1) estimate and take into account the costs as described in Section 18.8(e); or
 - (2) if the Approved Project Schedule permits, and the Change is sufficiently separate from other Work, then the Concessionaire will cause the EPC Contractor to obtain competitive tenders for the Work involved in the Change, as described in Section 18.8(f).
- (e) Detailed costs need not be provided with the Change Report but the cost breakdown provided will be of sufficient detail as reasonably required by RAVCO to evaluate the Change and to understand the magnitude of the cost of the Change. If RAVCO considers it necessary to examine details set out in the Change Report, the estimated costs reviewed will be based and evaluated on the following principles, which, if the Concessionaire and RAVCO do not agree on the costs, will be the basis of all estimated costs that can be agreed by RAVCO:
- (1) construction labour costs, except labour associated with design and engineering, regardless of whether in operations, management, or administration roles, based on the hourly rate paid including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pension funds, statutory payments, Workmen's Compensation Insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course;
 - (2) cost of Design (excluding design and engineering comprised in the cost of supply of Equipment and systems) will be reviewed and determined based on the number of hours reasonably estimated to be required to perform the work multiplied by the net estimated hourly amount (based on salary) paid to design and engineering staff, multiplied by 2.5 or such other rate as may have been agreed by the Concessionaire, a Project Contractor or Sub-contractor for Design services pursuant to a Project Contract or Sub-Contract. If RAVCO requests to review the mark-up provisions on design or engineering costs under a Project Contract or Sub-Contract as part of its review and evaluation, the Concessionaire will make available all clauses that are relevant to the amount of the mark-up;

- (3) cost of supply and delivery of materials, consumables and Equipment, including associated costs such as cost of associated testing, commissioning, spare parts, manuals and software, and including the design and engineering related thereto based on the estimated price to be charged by the supplier;
 - (4) cost of construction equipment calculated using the rates as may be agreed between the Concessionaire or Project Contractors and Sub-Contractors, or if no such agreed rates exist at the then current rates set out in the B.C. Road Builders and Heavy Construction Association Equipment Rental Rate Guide (or any successor guide) where applicable, or as are reasonably commercially available, and the number of hours such equipment is estimated to be required to carry out the RAVCO Change, together with appropriate amounts for delivering such equipment to and from the place of Construction;
 - (5) the cost of any other rental, fabrication facility, or factory costs directly associated with the RAVCO Change will be calculated based upon the reasonable direct costs estimated to be paid by the Concessionaire, Project Contractor or any of their Affiliates or Sub-Contractor to the supplier;
 - (6) if a Change involves information that is proprietary such that detailed costs are confidential in the normal course of business (for example in some of the systems elements) then the Concessionaire will provide all necessary evidence that can be made available, and also where reasonably necessary arrange meetings with the suppliers and Sub-Contractors, to explain and substantiate the cost of the Change;
 - (7) the costs involved in obtaining and evaluating tenders and awarding a contract for Work that is to be tendered under Section 18.8(d)(2), and the supervision and management of such contract;
 - (8) all other Design and Construction costs pertaining to the Change, such as but not limited to costs of additional site establishment, wastage, disposal, laboratory and testing fees, insurance, bonding, Permits, appropriate disbursements (printing, travel, accommodation), import duties, and so on will be calculated at the estimated direct cost to the Concessionaire, Project Contractor or Sub-contractor; and
 - (9) appropriate allowances for risk, contingency and warranty obligations; and
 - (10) mark-ups in accordance with Section 18.8(g).
- (f) If the Work involved in the Change can be reasonably accommodated by way of tender as described in Section 18.8(d)(2), then the Concessionaire will obtain at least three competitive tenders for the Work described in the Change, and

the Change will be valued at the cost of the lowest compliant tender received, marked up as set out in Section 18.8(g).

- (g) Mark-up on costs associated with a RAVCO Change will be calculated as follows:

- (1) Design Personnel: the entity actually undertaking the Design, including pursuant to Section 18.8(e)(7), shall not be entitled to add a mark-up for its Design personnel over and above the mark-up set out in Section 18.8(e)(2);
- (2) Construction: regarding the costs of Construction involved in the RAVCO Change, if the entity actually undertaking the Construction is either the Concessionaire or the EPC Contractor, such entity may include a mark-up for head office overhead and profit calculated at 5.17(1)(c) of all direct costs 5.21 incurred in such Construction (excluding Design personnel referred to in 18.8(g)(1));
- (3) Sub-Contract Mark-ups: regarding costs of management and supervision:
 - (A) the Concessionaire will be entitled to charge a mark-up for overhead and profit equal to 5.17(1)(c) of the price to be charged to the Concessionaire for the performance of a Change or part thereof 5.21 by a Project Contractor or any other contractor that contracts directly with the Concessionaire in respect of that Change; and
 - (B) a Project Contractor will be entitled to charge a mark-up for management, supervision, overhead and profit equal to 10% of the price to be charged to the Project Contractor for the performance of a Change or part thereof by a Sub-contractor.
 - (C) each Sub-contractor's quotation will include its own allowance for head office overhead and profit as has been agreed to by such Sub-contractor for other Work on the System, or as is typical of its standard business practice. If such percentage is in excess of 10%, it will be identified in the Change Report, and the Concessionaire will, as requested by RAVCO's Representative, make available copies of portions of the Sub-Contracts substantiating such percentage;
 - (D) each Sub-contractor will be entitled to charge a mark-up for any part of a Change that is to be performed for that Sub-contractor by a lower tier Sub-contractor. Such mark-up will be at the corresponding mark-up rate agreed by the Sub-contractor for other Work on the System, or as is typical of its standard business practice. If such percentage is in excess of 5.17(1)(c), it will be 5.21 highlighted in the Change Report; and

- (E) if the Work or supply being carried out by a Sub-contractor or supplier in its agreements with a Project Contractor related to the Construction apart from the Change is different from any of the above (which is anticipated to be the case for System elements such as some control systems and vehicle supply contracts) such method will be followed, but the Concessionaire will highlight such commercial arrangements in the Change Report, substantiated by the relevant extracts of the Sub-Contracts as reasonably required to demonstrate that the arrangements are reasonable, considering market demands, and are arms-length.

18.9 Agreements or Determination of RAVCO Change Valuation

Following receipt by RAVCO of a Change Report in response to a Preliminary Change Instruction:

- (a) the parties will use commercially reasonable efforts to reach agreement on the costs and other information contained in the Change Report with reference to both the Construction Scope and Operation and Maintenance Scope and any agreement so reached in writing will, if recorded in a RAVCO Change Certificate issued in accordance with Section 18.11, be binding upon RAVCO and the Concessionaire with respect to the RAVCO Change;
- (b) if the parties are unable to agree on a Change Report, RAVCO may:
 - (1) elect not to proceed with the RAVCO Change described in the Preliminary Change Instruction; or
 - (2) issue to the Concessionaire a RAVCO Change Certificate stating RAVCO's determination of the matters referred to in Section 18.5 and 18.8; and
- (c) if the Concessionaire disagrees with all or any of the determinations set out in the RAVCO Change Certificate, then the Concessionaire may deliver to RAVCO a Dispute Notice, and such Dispute Notice may be in respect of the Construction Scope or the Operation and Maintenance Scope or both, and the Concessionaire will, without prejudice to its rights with respect to such Dispute, use commercially reasonable efforts to implement the RAVCO Change as directed in the RAVCO Change Certificate.

18.10 Payment for RAVCO Change

RAVCO will pay to the Concessionaire all amounts agreed or determined to be due and payable in respect of the RAVCO Change pursuant to Section 18.9(a) or 18.9(c), as the case may be, in accordance with Section 21.

18.11 RAVCO Change Certificate

A RAVCO Change will be authorized by RAVCO issuing to the Concessionaire a certificate (the "**RAVCO Change Certificate**") which will specify the extent to which the Change applies to the Construction Scope and the Operation and Maintenance Scope. The Concessionaire will not proceed with a RAVCO Change prior to the issuance of a RAVCO Change Certificate. Upon receipt of a RAVCO Change Certificate, subject to the Concessionaire's right to Dispute pursuant to Section 18.9(c), the Concessionaire will implement the RAVCO Change.

18.12 Responsibility for RAVCO Changes

Except as hereinafter provided, RAVCO will bear no risk or liability whatsoever arising from any RAVCO Change, other than the liability to make payment for such RAVCO Change under Section 18.10. RAVCO will indemnify the Concessionaire in respect of any increased costs or any Direct Losses suffered by the Concessionaire as a result of any particular design, materials, goods, workmanship or method of construction which RAVCO specifies must be incorporated in the RAVCO Change and which is subsequently shown to be defective (other than as a result of the default or negligence of the Concessionaire), provided that the Concessionaire objected in writing to the incorporation of such item prior to the issue of the relevant RAVCO Change Certificate and such objection was considered by RAVCO, or, in the case of disagreement, determined pursuant to the Dispute Resolution Procedure, to be reasonable.

19. CONCESSIONAIRE CHANGES

19.1 Request for Concessionaire's Change

Subject to Section 19.2, at any time during the Term the Concessionaire may submit to RAVCO a request to permit the Concessionaire to make a Concessionaire's Change and with such request the Concessionaire will supply such technical and other information as may be necessary to explain the reason for the Concessionaire's Change being requested and a draft of the proposed Concessionaire's Change Certificate.

19.2 Issue of Concessionaire's Change Certificate

The Concessionaire will not implement a Concessionaire's Change unless such Change has been approved by RAVCO and a Concessionaire's Change Certificate has been issued by RAVCO. RAVCO may not refuse to issue a Concessionaire's Change Certificate if the Concessionaire's Change is required to comply with a Change in Law. RAVCO may refuse to issue a Concessionaire's Change Certificate only if:

- (a) the proposed Change would contravene a provision of Section 18.3; or
- (b) RAVCO determines, acting reasonably, that such Change would adversely affect the scope, quality or standard of the System or reduce the performance of the System below the requirements set out in the Operation and Maintenance Requirements and Specifications or the Proposal Extracts.

Upon receipt of a proposed Concessionaire's Change Certificate pursuant to Section 19.1, RAVCO will either:

- (c) notify the Concessionaire that it refuses to approve the Concessionaire's Change (including the grounds for such lack of approval); or
- (d) issue a Concessionaire's Change Certificate,

within 30 days of receipt by RAVCO of the proposed Concessionaire's Change Certificate. If RAVCO fails to do either within such time it will be deemed to have issued a Concessionaire's Change Certificate in the form of the draft referred to in Section 19.1.

19.3 No Claims by Concessionaire

All Concessionaire's Changes will be implemented solely at the risk and cost of the Concessionaire except to the extent that RAVCO has expressly agreed to bear the cost of such changes under this Agreement. The Concessionaire will not be entitled to any form of payment, any extension of time for completion of the Project or any other relief or remedy as a result of the implementation of a Concessionaire's Change except as may be expressly agreed to by RAVCO. In addition, no liability will attach to, and the Concessionaire will have no Claim against, RAVCO by reason of a refusal to approve a Concessionaire's Change on the grounds allowed under Section 19.2, provided, however, that nothing in Section 19.2 or 19.3 will prevent the Concessionaire from exercising its right to submit a Dispute in respect of any such RAVCO refusal to the Dispute Resolution Procedure. Unless expressly provided herein or otherwise agreed, RAVCO will not be entitled to any benefit received by the Concessionaire on the implementation of a Concessionaire Change.

20. SMALL WORKS CHANGES

20.1 Small Works Rates

Not less than 180 days before the Service Commencement Date and the commencement of each subsequent Contract Year, the Concessionaire will propose a schedule of rates (the "Small Works Rates") to be applied in respect of any request by RAVCO for Small Works to be completed during that Contract Year.

20.2 Request for Small Works

Subject to Section 18.3 and at any time commencing not less than 180 days before the Service Commencement Date, RAVCO may from time to time request in writing that the Concessionaire undertake Small Works. A Preliminary Change Instruction and a Change Report will not be required for Small Works. Upon request by RAVCO for Small Works the Concessionaire will proceed to perform the Small Works.

20.3 Value of Small Works

If RAVCO requests the Concessionaire to perform any Small Works pursuant to Section 20.2, within 30 days of receipt of a monthly invoice from the Concessionaire, RAVCO will pay to the Concessionaire for the Small Work performed calculated on the following basis:

- (a) labour and equipment will be charged in accordance with the Small Works Rates, or where there is no comparable Small Works Rate for such labour and equipment, in accordance with rates which are agreed to prior to commencement of work; and
- (b) charges for material will be at the cost of such material to the Concessionaire (or any of its contractors), net of all discounts plus

20.4 Timing of Small Works

S.17(1)(e)
S.21

The Concessionaire will use commercially reasonable efforts to complete Small Works as soon as reasonably practical after request pursuant to Section 20.2 having regard, among other things, to the number of concurrent Small Works requests made by RAVCO.

20.5 Small Works Disputes

Any Dispute arising in connection with Small Works, including the annual determination of Small Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

21. RELEVANT EVENTS

21.1 Financing of Additional Capital Expenditures

If the Concessionaire will incur additional Capital Expenditures as a direct result of a Relevant Event which are estimated to be in excess of \$10 million, at RAVCO's request, the Concessionaire will use reasonable efforts to obtain the financing required to meet such additional Capital Expenditures on the best terms reasonably available and, to the extent that it is able to do so, there will be an adjustment made to the Operating Payments in accordance with Sections 21.4 to 21.7. RAVCO will:

- (a) promptly pay to the Concessionaire an amount equal to the reasonable out-of-pocket expenses incurred by the Concessionaire in seeking such financing provided that RAVCO approved such expenses prior to the Concessionaire incurring them; and
- (b) interim finance any expenditures and costs to be incurred by the Concessionaire until the earlier of the date on which such financing is obtained or payment is made pursuant to Section 21.2.

RAVCO acknowledges that the Senior Lenders have no obligation to provide the financing referred to above.

21.2 Lump Sum Payment of Additional Capital Expenditures

If:

- (a) the additional Capital Expenditures to be incurred by the Concessionaire as a direct result of a Relevant Event are estimated to be less than \$10 million;

- (b) RAVCO does not request the Concessionaire to seek financing for such Capital Expenditures;
- (c) such financing would result in a default under the Lending Agreements;
- (d) the Concessionaire is not able to obtain financing on terms acceptable to RAVCO within 90 days of the date the amount of the required Capital Expenditure is determined; or
- (e) at any time after requesting the Concessionaire to seek such financing, RAVCO gives notice withdrawing such request,

RAVCO will pay to the Concessionaire, within 30 days of receipt of written demand from the Concessionaire supported by all relevant information, an amount equal to the sum of:

- (f) the amount of such Capital Expenditure; and
- (g) all reasonable out-of-pocket expenses incurred by the Concessionaire, including any reasonable interim financing expenses, in connection with such Capital Expenditures.

21.3 Compensation for Direct Losses and other Non-Capital Expenditures

RAVCO will pay to the Concessionaire the amount to which the Concessionaire is entitled as a result of a Relevant Event, including Direct Losses, but excluding Capital Expenditures, by either:

- (a) provided the Concessionaire has not had to incur any costs that RAVCO has not paid, adjusting the Operating Payments in accordance with Sections 21.4 to 21.7; or
- (b) paying the Concessionaire such amount within 30 days of receipt of written demand from the Concessionaire.

21.4 Adjustments to Financial Model

Within 5 Business Days of the agreement or determination of increased Capital Expenditures or Direct Losses, if any, arising from a Relevant Event, the Concessionaire will give notice to RAVCO of the proposed adjustments to be made to the Financial Model to achieve the objectives set out in Section 21.5 and produce the output set out in Section 21.6. Such proposed adjustments will be ascertained by entering such cost adjustments and losses into the Financial Model with effect from the relevant date determined in accordance with Section 21.7 (the "Adjustment Date").

21.5 Objectives and Procedure

The objective of the procedure set out in this Section 21 is to determine the adjustments to the calculation of the Operating Payments so that upon comparing the output of the Financial Model (as at the Adjustment Date) before and after the Relevant Event (as appropriate) and taking into

account the impact of such changes on the economics of the Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Operating Payments will take effect, such comparison of the output from such Financial Model shows that:

- (a) the Base Case Equity IRR in respect of equity subscribed in and Junior Debt advanced to the Concessionaire prior to the occurrence of the Relevant Event will be unchanged except to the extent required to reflect any material change in the risk profile of the Project arising from the Relevant Event; and
- (b) the Concessionaire would not, by reason of the effect of the occurrence of the Relevant Event or the consequential change in cashflow during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Lending Agreements, in a position worse (which includes no less margin with respect to any Senior Debt financial covenants) than it would have been in if the Relevant Event had not occurred.

21.6 Adjusted Payments

Subject to Section 21.7, the output from the operation of the procedure set out in Section 21.5 will result in adjustments to the Operating Payments which will be payable by RAVCO with effect from the Adjustment Date.

21.7 Effective Date of Adjustments

Adjustments to the Operating Payments will be made by re-running the Financial Model in accordance with the provisions of Section 21.5 on the basis that the relevant Adjustment Date is:

- (a) in the case of a Relevant Event occurring before the Service Commencement Date, the Service Commencement Date; or
- (b) in the case of a Relevant Event occurring after the Service Commencement Date, the start of the next Payment Period in the Financial Model falling after the first scheduled date after completion or implementation of the changes required as a result of the Relevant Event.

If completion or implementation of the changes required as a result of the Relevant Event is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with Section 21.5, the date of adjustment to the Operating Payments payable by RAVCO will be delayed by a period equal to the delay in the completion or implementation of the required changes.

21.8 Audit of Financial Model

Prior to implementing any adjustments to the Operating Payments contemplated in this Section 21, RAVCO may, at its own expense, review and audit the revised Financial Model prepared by

the Concessionaire and the Concessionaire will provide such information as is reasonably required by RAVCO to conduct such audit.

22. REFINANCING

22.1 RAVCO Consent to Refinancing

The Concessionaire will not enter into any Qualifying Refinancing without the prior consent of RAVCO, such consent not to be unreasonably withheld or delayed. In particular, RAVCO will not withhold or delay its consent to attempt to obtain a greater than 50% share of the Refinancing Gain.

22.2 RAVCO Share of Refinancing Gain

RAVCO will be entitled to receive a 50% share of any Refinancing Gain.

22.3 Proposal to Refinance

The Concessionaire will promptly provide RAVCO with full details of any proposed Qualifying Refinancing, including:

- (a) a copy of the proposed financial model relating to it (if any);
- (b) the basis for the assumptions used in the proposed financial model; and
- (c) RAVCO's estimated share of the Refinancing Gain, expressed in terms of:
 - (1) the payment described in Section 22.4(a); and
 - (2) the reduction of Payments described in Section 22.4(b).

RAVCO will (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether that Refinancing is a Qualifying Refinancing or not.

22.4 Payment to RAVCO

Provided that RAVCO gives notice to the Concessionaire within 20 Business Days of receiving from the Concessionaire the information described in Section 22.3, RAVCO may elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made by the Concessionaire on or about the date of the Refinancing;
- (b) a reduction in the Payments over the remaining term of this Agreement; or
- (c) a combination of (a) and (b).

22.5 Calculation of Refinancing Gain

RAVCO and the Concessionaire will negotiate in good faith to agree on the basis and method of calculation of the Refinancing Gain and payment of RAVCO's share of the Refinancing Gain, taking into account how RAVCO has elected to receive its share of the Refinancing Gain. If RAVCO and the Concessionaire are unable to agree on the basis and method of calculation of the Refinancing Gain or the payment of RAVCO's share, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

22.6 RAVCO Expenses

The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and within 28 days of any Qualifying Refinancing the Concessionaire will pay to RAVCO all reasonable and proper professional costs incurred by RAVCO.

23. CONCESSIONAIRE DEFAULT

23.1 Deficiency Notice for Persistent Breach

Without prejudice to any other rights of RAVCO under this Agreement or otherwise, if the Concessionaire persistently or repeatedly breaches any provision of this Agreement and such breaches materially and adversely affect the performance of the Work or the performance of the Operation and Maintenance Services, RAVCO's Representative may give the Concessionaire's Representative a Deficiency Notice describing such breach and following the delivery of such notice the provisions of Sections 17.3, 17.4 and 17.5 of Schedule 4 (Operation and Maintenance Requirements and Specifications) will apply.

23.2 Warning Notices

Without prejudice to any other rights of RAVCO under this Agreement or otherwise, if at any time the Concessionaire has been given:

- (a) three or more Deficiency Notices in any one calendar month; or
- (b) 12 or more Deficiency Notices in any 12 month period (excluding any Deficiency Notice in respect of which RAVCO has already given a Warning Notice),

then RAVCO may give notice (a "**Warning Notice**") to the Concessionaire setting out the matter or matters giving rise to such notice and containing a reminder to the Concessionaire of the implications of such notice. Any such notice will state on its face that it is a "Warning Notice".

23.3 Concessionaire Events of Default

For the purposes of this Agreement, Concessionaire Event of Default means any of the following events or circumstances:

- (a) if the Concessionaire fails to perform or observe any material term, condition, covenant or undertaking to RAVCO contained in this Agreement or any agreement ancillary hereto and such failure materially and adversely affects the performance of the Work or the performance of the Operation and Maintenance Services;
- (b) if any material representation or warranty made by the Concessionaire to RAVCO in this Agreement or any agreement ancillary hereto (or any ancillary certificate, statement or notice issued hereto or thereto) is incorrect in any material respect when made or deemed made (other than as a consequence of a breach by RAVCO of its obligations under this Agreement) and such incorrect representation or warranty materially and adversely affects the performance of the Work or the performance of the Operation and Maintenance Services;
- (c) if the Concessionaire commits any material breach of the terms of any Permit and such breach materially and adversely affects the performance of the Work or the performance of the Operation and Maintenance Services;
- (d) if the Concessionaire abandons the Work (other than pursuant to this Agreement as a consequence of a breach by RAVCO of its obligations under this Agreement or an event of Force Majeure);
- (e) if the Approved Project Schedule shows that the Service Commencement Date will be more than 12 months after the Service Commencement Deadline;
- (f) if a Lender delivers a "Step-Out Notice" under the Lenders' Remedies Agreement and the Concessionaire Event of Default, if any, which gave rise to such Lender delivering a "Step-In Notice" is continuing;
- (g) if any of the following events occurs in respect of the Concessionaire:
 - (1) any arrangement or composition with or for the benefit of creditors being entered into by or in relation to the Concessionaire;
 - (2) any proceedings with respect to the Concessionaire being commenced under the *Companies' Creditors Arrangement Act* which are not stayed, dismissed or otherwise remedied within 20 Business Days;
 - (3) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Concessionaire;
 - (4) the Concessionaire ceasing to carry on business;
 - (5) the Concessionaire making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions

for relief under the *Bankruptcy and Insolvency Act* or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Concessionaire under the *Bankruptcy and Insolvency Act* or otherwise and, if commenced against the Concessionaire, not stayed, dismissed or otherwise remedied within 30 days of its commencement;

- (6) a petition being filed (and not being contested in good faith using all reasonable efforts), or a resolution being passed or an order being made for the winding-up, liquidation or dissolution of the Concessionaire;
- (h) if, prior to the Operating Period, SNC-Lavalin Inc. and its Affiliates hold less than 50% of the equity interests (including limited partnership units and Junior Debt) in the Concessionaire without RAVCO's prior written consent, other than:
 - (1) a reduction to not less than 33 1/3% provided such reduction is permitted under the Senior Lending Agreements in effect as of the date hereof;
 - (2) in connection with the exercise of rights of the Senior Lenders under the Lending Agreements; or
 - (3) as contemplated by the Lenders' Remedies Agreement;
- (i) if, during the Operating Period, any Change in Ownership of the Concessionaire occurs which the Concessionaire has not provided at least 30 days advance notice to RAVCO, other than in connection with the exercise of rights of the Senior Lenders under the Lending Agreements or as contemplated by the Lenders' Remedies Agreement;
- (j) if the Concessionaire fails to comply with Section 29.2; or
- (k) if, during the Operating Period, the Concessionaire is given a total of four or more Warning Notices in any 15 month period.

23.4 Notification

The Concessionaire will notify RAVCO of the occurrence, and details, of any Concessionaire Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Concessionaire Event of Default, in either case promptly on the Concessionaire becoming aware of its occurrence.

23.5 Notice of Default or Termination

After the occurrence of a Concessionaire Event of Default and while it is subsisting, RAVCO may:

- (a) in the case of a Concessionaire Event of Default referred to in Section 23.3(a), 23.3(b) or 23.3(c), serve a written notice of default, specifying in reasonable

detail the type and nature of the default, on the Concessionaire requiring the Concessionaire at the Concessionaire's option either:

- (1) to remedy the Concessionaire Event of Default referred to in such notice of default (if it is continuing) within 20 Business Days of such notice of default; or
 - (2) to put forward within 20 Business Days of such notice of default a reasonable program (set out, if appropriate, in stages) for remedying the Concessionaire Event of Default. The program will specify in reasonable detail the manner in, and the latest date by, which such Concessionaire Event of Default is proposed to be remedied (the Concessionaire will only have the option of putting forward such a program if it first notifies RAVCO within 10 Business Days of such notice of default that it proposes to do so); and
- (b) in the case of a Concessionaire Event of Default referred to in Sections 23.3(d), 23.3(e), 23.3(f), 23.3(g), 23.3(h), 23.3(i), 23.3(j) or 23.3(k), subject to Section 25.2 and the terms of the Lenders' Remedies Agreement, terminate this Agreement in its entirety by notice having immediate effect.

23.6 Remedy Provisions

Where the Concessionaire puts forward a program in accordance with Section 23.5(a)(2), RAVCO will have 20 Business Days from receipt of the program within which to notify the Concessionaire that RAVCO, acting reasonably, does not accept the program, failing which RAVCO will be deemed to have accepted the program. Where RAVCO notifies the Concessionaire that it does not accept the program as being reasonable, the parties will use commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the question of whether the program (as it may have been amended by agreement) will remedy the Concessionaire Event of Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

23.7 RAVCO Termination Right

If:

- (a) a Concessionaire Event of Default notified in a notice of default served under Section 23.5(a) is not remedied before the expiry of the period referred to in Section 23.5(a)(1) and no program has been put forward by the Concessionaire under Section 23.5(a)(2);
- (b) if the Concessionaire puts forward a program pursuant to Section 23.5(a)(2) which has been accepted by RAVCO (including after negotiations under Section 23.6) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure and the Concessionaire fails to achieve any material

element of the program or the end date for the program (as the case may be); or

- (c) any program put forward by the Concessionaire pursuant to Section 23.5(a)(2) is rejected by RAVCO as not being reasonable, and the Dispute Resolution Procedure does not find against that rejection,

then RAVCO may, subject to Sections 14, 15, 16, 25.2 and the terms of the Lenders' Remedies Agreement, and provided there is no RAVCO Event of Default subsisting at such time, terminate this Agreement in its entirety by notice to the Concessionaire with immediate effect. For the purposes of Section 23.7(b), if the Concessionaire's performance of the program is adversely affected by the occurrence of a Compensation Event, Relief Event, Change of Law, Force Majeure or a breach by RAVCO of its obligations under this Agreement, then, subject to the Concessionaire complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

23.8 Failure to Achieve Service Commencement Deadline

In addition to any other rights of RAVCO under this Agreement and subject to any relief to which the Concessionaire may be entitled under Section 14, 15 or 16 or otherwise in this Agreement, if the Concessionaire does not achieve Service Commencement on or before the Service Commencement Deadline, the Concessionaire will pay to RAVCO liquidated damages at the rate of \$10,000 per day for each day commencing on the Service Commencement Deadline and ending on the earlier of the day before the Concessionaire achieves Service Commencement and the Termination Date. RAVCO and the Concessionaire agree that such liquidated damages:

- (a) are a genuine and agreed calculation of RAVCO's reasonably anticipated damages having regard to the daily additional project costs which RAVCO and the Concessionaire estimate that RAVCO will incur as a result of the Concessionaire not achieving Service Commencement by the Service Commencement Deadline; and
- (b) do not represent a penalty.

23.9 RAVCO Costs

The Concessionaire will reimburse RAVCO for all reasonable costs incurred by RAVCO in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Section 23. RAVCO will take reasonable steps to mitigate such costs.

23.10 Exercise of Termination Rights

RAVCO will not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. Subject to Sections 29.11 to 29.13, the right of RAVCO to

terminate this Agreement under this Section 23 is in addition, and without prejudice, to any other right which RAVCO may have to Claim the amount of loss or damage suffered by RAVCO on account of the acts or omissions of the Concessionaire or to take any action other than termination of this Agreement.

24. DEFAULT BY RAVCO

24.1 RAVCO Events of Default

For the purposes of this Agreement, RAVCO Event of Default means any of the following events or circumstances:

- (a) if RAVCO or GVTA fail to pay any amounts due and owing to the Concessionaire under this Agreement or any agreement ancillary hereto on the due date and RAVCO or GVTA have not remedied such failure to pay within 10 days of notice from the Concessionaire;
- (b) except as provided for in Section 24.1(a), if RAVCO or GVTA fail to perform or observe any term, condition, covenant or undertaking to the Concessionaire contained in this Agreement or any agreement ancillary hereto and such failure materially and adversely affects the ability of the Concessionaire to perform its obligations under this Agreement and which has not been remedied by RAVCO within 30 days of notice from the Concessionaire;
- (c) if any representation or warranty made by RAVCO or GVTA to the Concessionaire in this Agreement or any agreement ancillary hereto (or any ancillary certificate, statement or notice issued hereto or thereto) is incorrect in any material respect when made or deemed made (other than as a consequence of a breach by the Concessionaire of its obligations under this Agreement) and such incorrect representation or warranty materially and adversely affects the ability of the Concessionaire to perform its obligations under this Agreement and which has not been remedied by RAVCO within 30 days of notice from the Concessionaire;
- (d) if any material part of the System or any interest in the Concessionaire is expropriated by any of Canada, the Province, GVTA, YVR, either of the Cities or any of their respective agents or Affiliates;
- (e) if any of the following events occurs in respect of RAVCO or GVTA:
 - (1) any arrangement or composition with or for the benefit of creditors being entered into by or in relation to RAVCO or GVTA;
 - (2) any proceedings with respect to RAVCO or GVTA being commenced under the *Companies' Creditors Arrangement Act* which are not stayed, dismissed or otherwise remedied within 20 Business Days;

- (3) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets RAVCO or GVTA;
- (4) RAVCO or GVTA ceasing to carry on business;
- (5) RAVCO or GVTA making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against RAVCO or GVTA under the *Bankruptcy and Insolvency Act* or otherwise and, if commenced against the RAVCO or GVTA, not stayed, dismissed or otherwise remedied within 30 days of its commencement; or
- (6) a petition being filed (and not being contested in good faith using all reasonable efforts), or a resolution being passed or an order being made for the winding-up, liquidation or dissolution of RAVCO or GVTA;
- (f) any Change in Ownership of RAVCO occurs to which the Concessionaire has not expressly consented in writing, acting reasonably;
- (g) if RAVCO fails to comply with its obligations under Section 29.3; or
- (h) this Agreement is determined, by legislative change or otherwise, to be unenforceable against either RAVCO or GVTA.

24.2 Notification

RAVCO will notify the Concessionaire of the occurrence, and details, of any RAVCO Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a RAVCO Event of Default, in either case promptly on RAVCO becoming aware of its occurrence.

24.3 Concessionaire's Options

After the occurrence of a RAVCO Event of Default and while it is still subsisting, the Concessionaire may, at its option:

- (a) in respect of execution of the Work prior to the Service Commencement Date, suspend performance by it of its obligations under this Agreement until such time as RAVCO has demonstrated to the reasonable satisfaction of the Concessionaire that it will perform and is capable of performing its obligations under this Agreement; and/or

- (b) in the case of a RAVCO Event of Default referred to in Section 24.1(a), suspend performance by it of its obligations under this Agreement until RAVCO has remedied such RAVCO Event of Default; and/or
- (c) in the case of a RAVCO Event of Default referred to in Sections 24.1(a), 24.1(b), 24.1(c) or 24.1(f), serve notice on RAVCO of the occurrence specifying details of such RAVCO Event of Default and if the relevant matter or circumstance has not been rectified or remedied by RAVCO or otherwise within 20 Business Days of such notice, the Concessionaire may serve a further notice on RAVCO terminating this Agreement with immediate effect; and/or
- (d) in the case of a RAVCO Event of Default referred to in Sections 24.1(d), 24.1(e), 24.1(g) or 24.1(h), terminate this Agreement in its entirety by notice having immediate effect subject to Section 25.2.

24.4 Concessionaire Costs

RAVCO will reimburse the Concessionaire for all reasonable costs incurred by the Concessionaire in exercising any of its rights (including any relevant increased administrative expenses and actual legal and other expenses) under this Section 24. The Concessionaire will take reasonable steps to mitigate such costs.

24.5 Exercise of Termination Rights

The Concessionaire will not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. Subject to Sections 29.11 to 29.13, the right of the Concessionaire to terminate this Agreement under this Section 24 is in addition, and without prejudice, to any other right which the Concessionaire may have to Claim the amount of loss or damage suffered by the Concessionaire on account of the acts or omissions of RAVCO or to take any action other than termination of this Agreement.

25. EFFECT OF TERMINATION

25.1 Continued Effect – No Waiver

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

25.2 Continued Performance

Subject to the Concessionaire's rights under Section 24.3(a) and 24.3(b), the parties will continue to perform their obligations under this Agreement (and for greater certainty, RAVCO will continue to make Payments), notwithstanding the giving of any notice of default or notice of termination, until the Transfer Date.

25.3 Transfer to RAVCO of Assets, Contracts, etc.

No later than the Transfer Date:

- (a) if prior to the Service Commencement Date:
 - (1) in so far as any transfer will be necessary to fully and effectively transfer property, the Concessionaire will transfer to, and there will vest in, RAVCO (or any New Concessionaire as may be appointed by RAVCO) free from all financial encumbrances, except encumbrances in respect of leases which RAVCO or such New Concessionaire has agreed, acting reasonably, to assume:
 - (A) such part of the System as has been constructed on or has become affixed to the Real Property Interests;
 - (B) all construction materials on-hand to be affixed to the Real Property Interests or otherwise used in the System; and
 - (C) all Non-Fixed Assets which have been acquired by the Concessionaire; and
 - (2) if RAVCO so elects:
 - (A) the construction plant and equipment will remain available to RAVCO or the New Concessionaire for the purposes of completing the Work; and
 - (B) all other plant and all materials on or near the Real Property Interests will remain available to RAVCO or the New Concessionaire for the purposes of completing the Work,
 subject to
 - (C) payment by RAVCO of the EPC Contractor's reasonable charges, provided that if termination occurs under Section 24.3 the consent of the EPC Contractor will be required; and
 - (D) assumption by RAVCO of all applicable leases;
- (b) if after the Service Commencement Date, the Concessionaire will transfer to, and there will vest in RAVCO (or any New Concessionaire as may be appointed by RAVCO) free from all financial encumbrances all of the Non-Fixed Assets except encumbrances in respect of leases which RAVCO or such New Concessionaire has agreed, acting reasonably, to assume;
- (c) if RAVCO so elects, the Concessionaire will cause any Project Contract to be novated or assigned to RAVCO, provided that if termination occurs under Section 24.3 the consent of the applicable Project Contractor will be required;

- (d) the Concessionaire will assign to RAVCO all sub-licences of space in the System;
- (e) the Concessionaire will, or will cause any Project Contractor to, offer to sell to RAVCO at a fair value (determined as between a willing vendor and willing purchaser, with any disputes as to such fair value being determined pursuant to the Dispute Resolution Procedure), free from any security interest with full title guarantee all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by the Concessionaire or any of the Project Contractors and reasonably required by RAVCO in connection with the operation of the System or the provision of the Operation and Maintenance Services other than any of the assets described in Section 25.3(a)(1) and 25.3(b);
- (f) the Concessionaire will deliver to RAVCO (to the extent not already delivered to RAVCO):
 - (1) all existing designs, plans and other documents produced in connection with the System and in the control of the Concessionaire;
 - (2) one complete set of existing "as built drawings" showing all alterations made to the System since the commencement of operation of the System; and
 - (3) one complete set of existing up to date maintenance, operation and training manuals for the System,

subject to reasonable generally applicable third party licensing terms;

- (g) the Concessionaire will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment, including Non-Fixed Assets, used or made available by the Concessionaire under this Agreement and included in the System but not previously assigned or licensed to RAVCO are assigned, licensed or otherwise transferred to RAVCO;
- (h) to the extent permitted by Law, the Concessionaire will assign to RAVCO (or any New Concessionaire as may be appointed by RAVCO) all Permits, including the EAC;
- (i) the Concessionaire will deliver to RAVCO all records required to be kept by the Concessionaire hereunder (the Concessionaire having the right to retain copies thereof) unless such documents are:
 - (1) required by Law to be retained by the Concessionaire or a Project Contractor or Sub-Contractor, in which case complete copies will be delivered to RAVCO; or

- (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Work or the Operation and Maintenance will be delivered to RAVCO no later than the Transfer Date; and
- (j) RAVCO will, or will cause a New Concessionaire to, at its own cost and without any obligation of contribution by the Concessionaire:
 - (1) assume, all obligations under and in respect of, and will become bound by, any collective agreement of the Concessionaire or the Operator and will be responsible for the obligations and liabilities of the employer thereunder arising from and after the transfer date in respect of any unionized employees of the Concessionaire or the Operator; and
 - (2) give offers of employment commencing on the transfer date to each non-union employee of the Concessionaire or the Operator, other than the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Director of Maintenance or any person occupying a substantially similar senior management position, such offers to provide for:
 - (A) substantially similar job functions as each such employee was performing or held on the Termination Payment Date or the Early Termination Payment Date, as the case may be;
 - (B) credit for the same number of years of service as such employee had with the Concessionaire or the Operator as of the transfer date; and
 - (C) substantially similar salary and benefits consistent with the Concessionaire's or the Operator's policies and plans.

The Concessionaire will ensure that provision is made in all applicable contracts to ensure that RAVCO will be in a position to exercise its rights, and the Concessionaire will be in a position to comply with its obligations, under this Section 25.3 without additional payment or compensation to any Person.

25.4 Transitional Arrangements

The Concessionaire will:

- (a) on request by RAVCO and on payment of the Concessionaire's reasonable costs by RAVCO, for a period not to exceed three months after the Transfer Date, co-operate fully with RAVCO and any successor providing to RAVCO services in the nature of any of the Operation and Maintenance Services or any part of the Operation and Maintenance Services, in order to achieve a smooth transfer of the manner in which RAVCO obtains services in the nature of the Operation and Maintenance Services and to avoid or mitigate in so far as

reasonably practicable any inconvenience or any risk to the health and safety of the employees of RAVCO and members of the public;

- (b) as soon as practicable following the Transfer Date remove from the Real Property Interests all property not acquired by RAVCO pursuant to Section 25.3 (or not belonging to RAVCO) and if it has not done so within 60 days after any notice from RAVCO requiring it to do so RAVCO may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit of the Concessionaire;
- (c) on the Transfer Date deliver to RAVCO's Representative:
 - (1) all keys, access codes or other devices required to operate the System;
 - (2) any Project Intellectual Property required to be delivered by the Concessionaire pursuant to Schedule 5 (Intellectual Property); and
- (d) as soon as practicable after the Transfer Date vacate the Real Property Interests and will leave the Real Property Interests and the System in a safe, clean and orderly condition.

25.5 Concessionaire to Cooperate

If RAVCO wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Operation and Maintenance Services or any of them) following the expiry of this Agreement, the Concessionaire will prior to the Expiry Date co-operate with RAVCO fully in such competition process including by:

- (a) providing any information which RAVCO may reasonably require to conduct such competition except that information which is commercially sensitive to the Concessionaire (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Concessionaire give that competitor a competitive advantage over the Concessionaire and thereby prejudice the business of the Concessionaire); and
- (b) assisting RAVCO by providing any participants in such competition process with access to the Real Property Interests and the System provided such access does not affect the operation of the System in a way that results in any reduction in Operating Payments.

The Concessionaire will be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services.

25.6 Compensation on Termination

If this Agreement is terminated pursuant to its terms, then RAVCO will pay compensation to the Concessionaire in accordance with Schedule 13 (Compensation on Termination).

26. CONFIDENTIALITY

26.1 Confidential Information

In this Section, "Confidential Information" means all confidential information of a party which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly pursuant to discussions with the other party. "Confidential Information" includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such information.

26.2 Use and Disclosure of Confidential Information

Each party will hold in confidence any Confidential Information received from the other party, provided that the provisions of this Section will not restrict either party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Concessionaire may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:

- (a) provide to the Lenders such documents and other information as are reasonably required by the Lenders in connection with the raising of financing for the Project or which the Concessionaire is obliged to supply by the terms of the Lending Agreements; and
- (b) provide to a Project Contractor, or cause to be provided to other third parties, documents and other information which are necessary or useful for the Concessionaire's performance of its obligations under this Agreement.

26.3 Exceptions

Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which the party disclosing the Confidential Information confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (c) to the extent any Person is required to disclose such Confidential Information by Law;

- (d) to the extent consistent with any RAVCO policy concerning RAVCO's Confidential Information, the details of which have been provided to the Concessionaire in writing prior to the disclosure; or
- (e) as RAVCO may be entitled to receive from the Concessionaire pursuant to this Agreement for the operation, maintenance or improvement of the System in the event of, or following, termination of this Agreement.

26.4 Announcements

Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the prior written consent of the other party (which will not be unreasonably withheld or delayed).

27. DISPUTE RESOLUTION

27.1 Procedure

Except as otherwise provided in this Agreement, any Dispute will be resolved in accordance with the Dispute Resolution Procedure.

27.2 Interest on Disputed Amounts

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, Interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure and will be calculated from the time such amount became payable under this Agreement until paid.

28. GVTA OBLIGATIONS

28.1 Joint and Several Payment Obligations

Subject to Section 28.2, GVTA is and will be jointly and severally liable with RAVCO for all amounts due and payable by RAVCO under this Agreement ("RAVCO Payment Obligations"). The Concessionaire will be entitled to proceed against either or both of RAVCO and GVTA for the recovery of RAVCO Payment Obligations.

28.2 Exclusions

If any RAVCO Payment Obligation was not paid or caused to be paid by RAVCO as a result of the failure of Canada or the Province (or both) to provide funding to RAVCO (the "Unfunded RAVCO Payment Obligations"), GVTA may either:

- (a) pay to the Concessionaire the amount of such Unfunded RAVCO Payment Obligations; or

- (b) notify the Concessionaire that it will not pay the amount of Unfunded RAVCO Payment Obligations, in which case GVTA will continue to be jointly and severally liable with respect to all RAVCO Payment Obligations other than any Unfunded RAVCO Payment Obligations directly paid by GVTA.

28.3 Liability for Termination Payment

If:

- (a) the failure of Canada or the Province (or both) to provide funding to RAVCO has resulted in a RAVCO Event of Default; and
- (b) the Concessionaire has given notice of termination of this Agreement,

the RAVCO Payment Obligations will include the full amount of the Termination Payment without deduction for any Unfunded RAVCO Payment Obligations even if RAVCO has breached any terms, or failed to satisfy any conditions, of any funding agreement with any of the Contributing Agencies Indemnified Parties (including GVTA, the Government of Canada and the Government of British Columbia) such that, as a consequence of such breach, any of the Contributing Agencies Indemnified Parties are not required to provide funding to RAVCO.

28.4 Limited Role of GVTA

GVTA is a party to this Agreement for the sole purpose of assuming joint and several liability for RAVCO Payment Obligations as set out in this Section 28. Unless RAVCO assigns this Agreement to GVTA in accordance with Section 29.3, GVTA will have no independent rights or any role in the exercise by RAVCO of its rights, or the performance by RAVCO of its responsibilities (except as provided in this Section 28), under this Agreement or the Lenders' Remedies Agreement and the Concessionaire will not be obliged to consult with, give notice to or obtain any consent from, or agreement of, GVTA with respect thereto.

28.5 Actions of RAVCO and Concessionaire Do Not Affect GVTA Liability

The obligations of GVTA under this Agreement will not be subject to any set-off, deduction or defence based upon any claim GVTA may have against RAVCO or any other Person (other than the Concessionaire), whether in connection with this Agreement or any other transaction, and will remain in full force and effect without regard to, and will not be released, discharged or in any way affected or impaired by any of the following:

- (a) any bankruptcy, receivership, insolvency, reorganization, amalgamation, arrangement, readjustment, composition, liquidation or similar proceedings with respect to RAVCO, GVTA or any other Person (other than the Concessionaire) or the properties or creditors of any of them under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up Act* (Canada) or any similar laws of any jurisdiction relating to insolvency or debtor relief, or any court order or stay of proceedings under any such laws relating to the obligations or enforcement of the obligations of RAVCO;

- (b) any lack or limitation of capacity, status, power or authority of RAVCO or GVTA or any of their respective directors, officers, employees or agents acting or purporting to act on their behalf, and any defect or any failure to comply with a formal legal requirement in the execution or delivery of any document;
- (c) any transfer of any assets to or from RAVCO, any consolidation, amalgamation or merger of RAVCO with or into any Person, or any change whatsoever in the name, objects, capital structure, corporate existence, membership, constitution or business of RAVCO;
- (d) any failure on the part of RAVCO or any other Person (other than the Concessionaire) to perform or comply with any term of this Agreement, any document or agreement contemplated under this Agreement or any other agreement or instrument;
- (e) any action or other proceeding brought by any creditors of, or by, RAVCO or any other Person for any reason whatsoever, including without limitation any action or proceeding in any way attacking or involving any issue in respect of this Agreement, any document or agreement contemplated under this Agreement, or any other agreement or instrument, but excluding any action by RAVCO against the Concessionaire for breach of this Agreement or any document or agreement contemplated under this Agreement; or
- (f) any invalidity or termination or failure of RAVCO to satisfy conditions of any funding agreement with any Contributing Agencies Indemnified Parties.

No act or omission of RAVCO under or related to this Agreement or the Lenders' Remedies Agreement will release, discharge, limit or otherwise affect GVTA's liability hereunder in any way. The Concessionaire may, without releasing, discharging, limiting or otherwise affecting GVTA's liability hereunder:

- (g) grant time, renewals, extensions, indulgences, releases and discharges to RAVCO;
- (h) take or abstain from taking securities or collateral from RAVCO or any other person or perfect or abstain from perfecting securities or collateral of RAVCO or any other person;
- (i) release, discharge, compromise or otherwise deal with (with or without consideration) any and all collateral, mortgages or other security given by RAVCO or any third party with respect to the RAVCO Payment Obligations or matters contemplated hereby;
- (j) accept compromises from RAVCO; or
- (k) otherwise deal with RAVCO and all other Persons and securities as the Concessionaire may see fit.

29. GENERAL

29.1 Enurement

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

29.2 Assignment by the Concessionaire

The Concessionaire will not, without the prior consent of RAVCO (such consent not to be unreasonably withheld or delayed during the Operating Period), assign, transfer or otherwise dispose of any interest in this Agreement or the Project Contracts except as security, in a form approved by RAVCO prior to its grant (such consent not to be unreasonably withheld or delayed), for any loan made to the Concessionaire under any Lending Agreement, provided that the assignee assumes all the obligations of the Concessionaire under this Agreement and enters into the Lenders' Remedies Agreement if RAVCO, in its sole discretion, so requires.

29.3 Assignment by RAVCO

RAVCO will not, without the prior consent of the Concessionaire (such consent not to be unreasonably withheld or delayed), assign, transfer or otherwise dispose of any interest in this Agreement or any agreement in connection with this Agreement to which the Concessionaire and RAVCO are parties unless:

- (a) the assignee is GVTA or a wholly-owned subsidiary of GVTA;
- (b) the assignment occurs at the commencement of, or anytime during, the Operating Period; and
- (c) the assignee assumes all of the obligations of RAVCO.

Upon an assignment by RAVCO in accordance with this Section 29.3, RAVCO will be deemed to have been released from all of its obligations under this Agreement and all references to "RAVCO" in this Agreement will be read as references to "GVTA" or its wholly-owned subsidiary, as the case may be. GVTA will not be released from any of its obligations under this Agreement unless it is the assignee.

29.4 Assignment by GVTA

Unless the Concessionaire consents (which consent may be withheld in the Concessionaire's discretion), any assignment by GVTA of its obligations under this Agreement will not release GVTA from any of its obligations under this Agreement.

29.5 Interest on Overdue Amounts

Subject to Section 27.2, if payment of any amount payable under this Agreement is not made when due (including, for greater certainty, Termination Payments payable pursuant to Schedule 13 (Compensation on Termination)), interest will be payable on such amount at the Default Interest Rate and will be calculated from the date due under this Agreement until paid.

29.6 Notices

Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Agreement (each, a "Notice") to a party must be given in writing. A Notice may be given by delivery to an individual or by electronically by fax or electronic mail, and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

(a) If to RAVCO:	(b) If to Concessionaire:	(c) if to GVTA
RAV Project Management Ltd. Suite 1650-409 Granville Street Vancouver, BC V6C 1T2	InTransit BC Limited Partnership, c/o InTransit British Columbia GP Ltd. 2800 Park Place 666 Burrard Street Vancouver, BC V6C 2Z7	Greater Vancouver Transportation Authority 1600-4720 Kingsway Burnaby, BC V5H 4N2
Attention: C.E.O.	Attention: Doug Buchanan	Attention: C.E.O.
Fax: 604-484-6799	Fax: (604) 605-3526	Fax: 604-453-4626

or to any other address, fax number, e-mail address or individual that the party designates. Any Notice:

- (a) if validly delivered, will be deemed to have been given when delivered;
- (b) if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day, and
- (c) if validly transmitted electronically after 3:00 p.m. (local time at the place of receipt) on a Business Day or at any time on a non-Business Day, will be deemed to have been given on the Business Day after the date of transmission.

29.7 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

29.8 No Partnership or Agency

Notwithstanding the reference to a "public-private partnership", the Concessionaire and RAVCO are not partners, nor is either party the agent of the other party. Nothing in this Agreement will be construed as creating a partnership or as constituting either party the agent of the other party. Neither party will hold itself out as having any authority or power to bind the other party in any way.

29.9 Further Assurances

Each party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

29.10 Remedies Cumulative

Subject to Sections 29.11, 29.12 and 29.13:

- (a) the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

29.11 Exclusive Warranties and Remedies

The warranties expressly set forth herein are exclusive and are in lieu of all other warranties, whether statutory, express or implied (including warranties of merchantability and fitness for a particular purpose, and warranties arising from course of dealing or usage of trade). The Concessionaire will have no liability and RAVCO will have no remedy for breach of warranty, including for Defects, except as expressly set forth, and in accordance with the provisions of this Agreement.

29.12 Limitation on RAVCO's Remedies

RAVCO's remedies in respect of any failure by the Concessionaire:

- (a) to achieve Service Commencement by the Service Commencement Deadline will be limited to RAVCO's rights pursuant to Section 23.5 and Section 23.8; or
- (b) to perform the Operation and Maintenance Services in accordance with this Agreement will be limited to reductions in the amount of the Availability Payment or the Quality Payment in accordance with Schedule 11 (Payments).

provided that nothing in this Section 29.12 will limit RAVCO's right to:

- (c) claim, on or after a termination of this Agreement, costs, losses, damages and expenses suffered or incurred by RAVCO as a result of rectifying or mitigating the effects of any breach of this Agreement by the Concessionaire except to the extent the same has been recovered by RAVCO under this Agreement or has been taken into account to reduce any compensation payable by RAVCO pursuant to Schedule 13 (Compensation on Termination);
- (d) make a claim for indemnification pursuant to Sections 12.1(a) to 12.1(e);
- (e) deliver to the Concessionaire a Dispute Notice, a Deficiency Notice, a Warning Notice or a notice of default or termination pursuant to Sections 23.5 or 23.7; or
- (f) pursue any other express remedy available to RAVCO under this Agreement or any equitable remedy, including injunctive relief and specific performance.

29.13 Limitation on Concessionaire's Remedies

To the extent the Concessionaire has claimed for relief or compensation for:

- (a) a Compensation Event pursuant to Section 14;
- (b) a Relief Event pursuant to Section 15; or
- (c) an event of Force Majeure pursuant to Section 16,

the Concessionaire may not make any further claim against RAVCO for costs, losses, damages or expenses incurred by the Concessionaire, or for any other relief, in respect of any such events provided that nothing in this Section 29.13 will limit the Concessionaire's right to:

- (d) make a claim for indemnification pursuant to Section 12.3; or
- (e) pursue any other express remedy available to the Concessionaire under this Agreement or any equitable remedy, including injunctive relief and specific performance.

29.14 Assignment of Third Party Claims

If and to the extent RAVCO has paid compensation to the Concessionaire under this Agreement, including pursuant to Sections 12.1 and 14, and the Concessionaire is the beneficiary of any Insurance Receivables or other Claims related to the compensation paid, the Concessionaire will:

- (a) diligently pursue the collection of such Insurance Receivables or such Claims and upon receipt of any and all amounts on account thereof promptly pay such amounts to RAVCO net of all reasonable costs; or

- (b) promptly upon the request of RAVCO assign the benefit of such Insurance Receivables and Claims to RAVCO and cooperate with and assist RAVCO in the collection or pursuit thereof.

29.15 Audit

RAVCO may, at its expense, audit the accounts and records of the Concessionaire and, in addition to the obligations of the Concessionaire set out in Schedule 15 (Records and Reports), the Concessionaire will provide RAVCO with reasonable access to all such books and records. During the Construction Period and the first three years following the Service Commencement Date, the Concessionaire will, at the request of RAVCO, permit Canada, at Canada's expense, to audit the accounts, records, claims and contracts of the Concessionaire in respect of the Project and will provide Canada with reasonable access to all such documents so that Canada may carry out any such audit.

29.16 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

29.17 Delivery by Fax

Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person to the other party, an originally executed copy of this Agreement.

29.18 Amendments

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each party to this Agreement at the time of the amendment, supplement, restatement or termination.

29.19 Submission to Jurisdiction

Subject to the Dispute Resolution Procedure, each of the parties irrevocably submits to the exclusive jurisdiction of the courts of British Columbia and all courts having appellate jurisdiction over those courts in any suit, action, or other proceeding in any way related to or arising out of this Agreement by any party to this Agreement against the other party to this Agreement (a "Permitted Action") and each party to this Agreement waives, and will not assert by way of motion, as a defence, or otherwise, in any Permitted Action, any claim that:

- (a) that party is not subject to the jurisdiction of the courts of British Columbia;
- (b) the Permitted Action is brought in an inconvenient forum;
- (c) the venue of the Permitted Action is improper, or
- (d) any subject matter of the Permitted Action may not be enforced in or by the courts of British Columbia.

In any suit or action brought to obtain a judgment for the recognition or enforcement of any final judgment rendered in a Permitted Action, no party to this Agreement will seek any review with respect to the merits of any Permitted Action, whether or not that party appears in or defends the Permitted Action.

29.20 Survival

Notwithstanding any other provision of this Agreement, the provisions of Sections 11, 12, 13, 14 (if and to the extent a Compensation Event relates to a claim made by a third party against the Concessionaire after the Termination Date), 25.3 to 25.6, 26, 27, 28.3, 29.6, 29.7, 29.10, 29.11, 29.12, 29.13, Schedule 5 (Intellectual Property), Schedule 13 (Compensation on Termination) and Schedule 14 (Dispute Resolution) will survive the expiry or any earlier termination of this Agreement.

29.21 Entire Agreement

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement, constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings in respect thereof, whether written or oral, express or implied, statutory or otherwise.

29.22 Amendment and Restatement

The Concession Agreement dated March 29, 2005 and all amendments thereto is hereby amended and restated by the terms of this Agreement.

29.23 Agreement on Approved Changes

The parties acknowledge that:

- (a) this Agreement incorporates and reflects Changes No. 1 (2nd Avenue Station), 6 (Bicycle Bridge), 7 (Relocation of King Edward Station) and 8 (Relocation of Richmond Terminus Station) which have been implemented pursuant to the Agreement on Approved Changes made as of March 29, 2005 (the "**Agreement on Approved Changes**") between RAVCO and the Concessionaire;

- (b) other Approved Changes (as defined in the Agreement on Approved Changes) have been implemented but are not reflected in this Agreement; and
- (c) notwithstanding the entering into of this Agreement, the Agreement on Approved Changes remains in full force and effect, unamended by this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.


RAV PROJECT MANAGEMENT LTD.

Per: 
Authorized Signatory

GREATER VANCOUVER TRANSPORTATION AUTHORITY

Per: 
Authorized Signatory

INTRANSIT BC LIMITED PARTNERSHIP, by its General Partner,
INTRANSIT BRITISH COLUMBIA GP LTD.

Per: 
Authorized Signatory