

Agreement No.

LICENCE AND UPLAND CONSENT AGREEMENT

THIS LICENCE AND UPLAND CONSENT AGREEMENT dated for reference ~~purposes July 1, 2015~~ this day of , 2020.

BETWEEN:

and

~~(the "Licensor"~~ hereinafter jointly referred to as the "Owner")

~~OF THE FIRST PART~~

AND:

(hereinafter referred to as the "Licensee")

~~OF THE SECOND PART~~

THIS LICENCE AND UPLAND CONSENT AGREEMENT WITNESSES THAT in of the covenants and agreements contained in this Licence and Upland Consent Agreement (the "Agreement") to be paid, observed and performed, the Parties covenant and agree as follows:

~~1.0 GRANT OF LICENCE AND UPLAND CONSENT~~

1.0 Grant of Licence and Upland Consent

1.1 The ~~Licensor licenses to the Licensee, subject to and in compliance with all laws, regulations and rules, which are from time to time in force, respecting the Licensor's~~ Owner grants its Upland Consent to the request for a grant of Crown tenure for the placement of a dock, fronting the Owner's Lands (PID:), which is legally described as That Part of the shown on Plan

 acres more or less;

(the "Owner's Lands"), the location

of which is shown more particularly on the attached Schedule "A" in accordance with provincially tenured Crown Land as set out in *Provincial File No.*

(a) ~~, being~~ In addition to the Upland Consent, the Owner grants to the Licensee, a non-exclusive licence, subject to and in compliance with all laws, regulations and rules, which are from time to time in force, respecting the right to have a walkway and dock connection over an approximately ~~that~~ 0.005 ha ~~–~~ (1.5 m by 33 m walkway and dock connection) part of the ~~Licensor's Lands~~ Owner's lands at
, located

"adjacent to

("Licence Area").

~~1.1 In addition to this Licence, the Licensor grants its Upland Consent for the placement of a dock fronting its Lands and shown more particularly on the attached Schedule "A".~~

~~2.0 RESERVATION OF RIGHTS~~ Reservation of Rights

2.1 The Licensee acknowledges that the Licence Area is situated within the Owner's Lands, a portion of which is used to actively operate a public trail, and which the Owner may in the future, utilize as part of a transportation corridor (such as for commuter rail) and that the Owner's ability to safely and efficiently operate same is paramount.

~~2.1.2~~ 2.2 The ~~Licensor~~ Owner reserves the right to enter, pass and repass through, over and upon the Licence Area from time to time, in common with the Licensee, and to construct and operate a ~~track or tracks of railway~~ public trail over any part of the Licence Area without liability on

the part of the LicensorOwner to pay for compensation or damages respecting any damage resulting from the exercise of these rights, including, but not limited to, any need to alter or remove any improvements within the Licence Area that would in the opinion of the Owner, impact or restrict any construction or use of the public trail.

~~2.2.3~~ The Licensee acknowledges that all or a portion of the Licence Area may be subject to the existence of or may later become subject to the existence of easements or licences, including, without limitation, above and below ground power lines, telephone lines, ~~railway facilities,~~ drains, sewers, pipes and structures, environmental monitoring or environmental recovery systems, including for certainty and without limitation, all fibre optic systems ("Works"). The Licensee agrees to allow any and all personnel to enter upon the Licence Area for the purpose of repairing and maintaining the Works or for the purpose of doing those things that may arise from the granting of an easement or licence that burdens the Licence Area.

~~2.4~~ ~~2.3~~ For certainty, the Licensee agrees that no entry onto the Licence Area by the LicensorOwner or any person deriving his or her right to enter onto the Licence Area through the LicensorOwner shall be or can be a trespass, since this Agreement does not create a lease or give the LicensorLicensee a right to the exclusive use and possession of the Licence Area. Any such entry, if not contemplated by the provisions hereof, shall at most be a breach of contract and then only if such entry materially interferes with the exercise by the Licensee of its rights hereunder and is not expressly or impliedly consented to by the LicenseeOwner.

~~3.0 TERM~~

3.0 Term

3.1 ~~3.1~~ The Licensee is to have and to hold the Licence Area ~~and be granted an Upland Consent~~ for a term of five (5) years commencing on ~~July~~January 1, ~~2015~~2021, and ending on ~~June 30~~December 31, 20202025 (the "Term").

3.2 ~~3.2~~ Either party may terminate this Licence ~~or Upland Consent~~ at any time during the Term or any renewal thereof on giving the other party ~~thirty~~ninety (~~30~~90) days written notice of such termination.

3.3 The Licensee, if it is not in default, may upon providing the LicensorOwner with three (3) months written notice prior to the expiration of the Term, ~~may request a renewal of this Licence, which request for renewal shall be~~ subject to the written agreement of the LicensorOwner, in its sole and absolute discretion ~~and provided the Licensee is not in default, renew this Licence and Upland Consent for one (1) additional five (5) year term (the "Renewal Term") on the same terms and conditions set out herein excepting that there shall be no right of renewal after the Renewal Term and save and except that the Fees payable during the~~

~~renewal term shall be as set forth in paragraph 4.2 hereof, including without limiting the generality of the foregoing, establishment of new License Fees to reflect inflation, recovery of the Owner's direct and indirect costs in administration of the Upland Consent and License and any other factors deemed relevant by the Owner.~~

~~4.0 LICENCE AND UPLAND CONSENT FEES~~

~~4.1 The Licensee shall pay to the Licensor a fee payable in annual instalments in advance on the first day of July every year during the Term, (the "Fees") plus the applicable Goods and Services Sales Tax ("GST") and any similar or replacement taxes as follows:~~

~~The Fees during the first year of the Term shall be one hundred and ten dollars (\$100.00) plus GST and any similar or replacement taxes due on July 1, 2015;~~

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4.0 Licence Fees

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4.1 The Licensee shall pay to the Owner a fee payable in annual installments in advance of the first day of January of every year during the Term, (the “Annual Fee”). The Annual Fee for the 2021 year shall be \$1,000 plus GST, and the Annual Fee for the remaining four (4) years of the term will be determined by increasing the Annual Fee for the prior year of the Term by three percent (3%) as set out in the following table:

| <u>Year</u> | <u>Annual Fee</u> | <u>5 % GST</u> | <u>Gross Annual Fee</u> |
|-------------|--------------------|-----------------|-------------------------|
| <u>2021</u> | <u>\$ 1,000.00</u> | <u>\$ 50.00</u> | <u>\$ 1,050.00</u> |
| <u>2022</u> | <u>\$ 1,030.00</u> | <u>\$ 51.50</u> | <u>\$ 1,081.50</u> |
| <u>2023</u> | <u>\$ 1,060.90</u> | <u>\$ 53.05</u> | <u>\$ 1,113.95</u> |
| <u>2024</u> | <u>\$ 1,092.73</u> | <u>\$ 54.64</u> | <u>\$ 1,147.37</u> |
| <u>2025</u> | <u>\$ 1,125.51</u> | <u>\$ 56.28</u> | <u>\$ 1,181.79</u> |

(a) GST, or any other applicable taxes, will be in addition to the Annual Fee.

(b) ~~(e)~~ Subject to the right of the LicensorOwner to remove the Licensee from the Licence Area by applicable legal means, if the Licensee holds over or continues in possession of any portion of the Licence Area after the expiry of the Term without the consent of the LicensorOwner, there shall be no implied renewal of this ~~Licence or Upland Consent Agreement~~. Such holding over of continued possession will create a licenceLicence and upland-consentUpland Consent on a month-to-month basis and ~~Fees~~the Fee shall be payable in advance on the first day of each month equal to the sum of two hundred percent (200%) of 1/12 of the ~~Fees~~Fee payable during the immediately preceding year of the Term. The terms and conditions of this ~~Licence and Upland Consent Agreement~~ shall, so far as applicable, apply to such overholding period.

~~4.2 The Fees payable during the first year of the Renewal Term shall not be less than the~~

~~Fees payable during the final year of the Term plus three percent (3%) or the fair market fee applicable to the Licence Area and the Upland Consent determined by the Licensor in its discretion, whichever is higher, and the Fees in each succeeding year of the Renewal Term shall be determined in the manner set out in paragraph 4.1 (b).~~

5.0 Net Licence

~~5.0 NET LICENCE AND UPLAND CONSENT~~

5.1 The Licensee acknowledges and agrees that it is intended that this Licence ~~and Upland Consent~~ shall be a completely carefree net ~~licence and upland consent~~Licence for the LicensorOwner. The LicensorOwner shall not be responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever, in respect of the lands, buildings, improvements or the contents thereof, ~~excepting only the Licensor's Income Tax in respect of income received from licensing the Licence Area and providing Upland Consent to interfere with its riparian rights.~~

6.0 ~~LICENSEE COVENANTS~~ Licensee Covenants

6.1 The Licensee covenants with the Licensor/Owner that the Licensee shall:

~~(a) pay the Fees as set out in this Licence and Upland Consent;~~

(a) pay the Licence Fee as set out in this Agreement;

~~(b)~~ (b) pay, indemnify and save harmless the Licensor/Owner from and against all Fees, taxes, rates, duties and assessments whatsoever (including taxes assessed, charged or levied for local improvement or business taxes or any and all value added, sales, goods and services, or similar tax) now assessed or charged against or levied upon or which may at any time hereafter during the Term be assessed, charged against or levied upon or in respect of the Licence ~~Area~~ or upon or in respect of any structures or improvements now or hereafter created or made on the Licence Area or now assessed or charged against or levied upon or which may at any time hereafter during the Term be assessed or charged against or levied upon the Licensor/Owner or the Licensee on account thereof or on account of any business conducted or carried out on or in the Licence Area (provided that if any of the same are not separately assessed against the Licence Area or improvements, the Licensor/Owner shall allocate a pro rata amount to the Licence Area and improvements);

~~(c)~~ (c) use the Licence Area only for the purpose of a pedestrian access and dock connection for accessing its dock improvements located within the provincially tenured Crown Land (Provincial File No. _____);

~~dock improvements covered by the Upland Consent granted herein;~~

~~a-d-~~

(d) ~~(d)~~ keep the Licence Area at all times in a state of repair and condition at least equivalent to the state of repair and condition of the Licence Area at the time of commencement of the Term, to the same extent as would a prudent and careful owner in occupation, save for damage by fire, lightning and tempest. On the expiration or sooner termination of the Term, the Licensee shall yield up the Licence Area in equivalent repair and condition to the repair and condition in which the Licence Area would have been kept by a prudent and careful owner in occupation during the Term, save for damage by fire, lightning and tempest;

(e) ~~(e)~~ allow the LicensorOwner to enter and view the state of repair, and that it shall repair the Licence Area according to notice received from the LicensorOwner, reasonable wear and tear and damage by fire, lightning and tempest only excepted;

(f) ~~(f)~~ promptly repair any damage to the Licence Area caused by the Licensee, its servants, agents, invitees or licensees;

(g) ~~(g)~~ carry out the permitted use under this Licence so as not to interfere with the drainage and slope stability of the Licence Area and adjacent lands;

(h) ~~(h)~~ not make or permit any alterations or additions to the Licence Area, not erect any buildings, structures, or improvements on the Licence Area, and not erect, affix, remove or change the location or style of any partitions or fixtures, including building services, on the Licence Area without the prior written consent of the LicensorOwner, except as shown on the plans attached as Schedule "B" to this agreement;

(i) ~~(i)~~ in the event that the Licensee has received permission as outlined in paragraph 6.1 ~~(gh) above~~ the Licensee shall, at its sole cost and expense, be responsible to locate and protect any and all Works within, under, or on the Licence Area including for certainty, all fibre optic systems. The Licensee acknowledges that any digging may be in the vicinity of existing Works and the Licensee agrees to:

(a) ~~(a)~~ maintain a three (3) foot separation from all Works. The LicensorOwner has not warranted and is under no obligation to advise the Licensee as to the location of Works within, under or on the Licence Area; and

~~(b) contact "CPR Call Before You Dig" at 1-888-678-7272 at least 72 hours prior to constructing the road to confirm the existence of any CPR utilities, communication lines or other, and will protect and not interfere in any way with any existing Licensor's works; and~~

(b) ~~(e)~~ contact "BC One Call" to locate and confirm the existence of any Works and will protect and not interfere in any way with any existing Works; and

(c) ~~(d)~~ the Licensee shall be subject to the supervision of a representative of the Licensee~~Owner~~ whose instructions shall be strictly followed and whose wages and expenses will be paid by the Licensee, and the Licensee shall be liable for any costs associated with the ~~Licensee's~~Licensee's disturbance of the ~~signal cables, or~~ fibre optic cables and any disruption of service caused by the ~~Licensee's~~Licensee's disturbance of the ~~signal cables or~~ fibre optic cables.

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- (j) ~~Q)~~ if requesting the ~~approval~~consent required under paragraph 6.1 ~~(gh) above,~~ and fill material is to be used, will submit to the ~~Licensor~~Owner particulars of the fill material to be utilized on the Licence Area, which fill material shall be clean and free of any contaminant or waste as defined by the *Environmental Management Act* of the Province of British Columbia, or any legislation enacted in replacement of it, as amended from time to time;
- (k) ~~(k)~~ not assign this Licence without the prior written consent of the ~~Licensor~~Owner which consent may arbitrarily be withheld;
- (l) not sublet or part with possession of, or grant a licence to use the Licence Area or any part thereof without the prior written consent of the ~~Licensor~~Owner which consent may arbitrarily be withheld;
- (m) ~~(m)~~ ensure that the Licence Area used by the Licensee ~~are~~is safe to occupy for its purposes and may make minor repairs at its cost to effect a safe work environment;
- (n) ~~(n)~~ not bring, keep or store or permit to be brought, kept or stored in or upon the Licence Area any dangerous substances or materials such as radioactive, explosive, poisonous, or inflammable substances or any other materials without the prior written consent of the ~~Licensor~~Owner which consent may be arbitrarily ~~be~~ withheld;
- (o) ~~(o)~~ pay promptly as and when they fall due all charges for water, electricity, telephone, gas and other private and public utilities used on or in respect of the Licence Area and for fittings, machinery, apparatus, meters, or other things licensed in respect thereof and for all work and services performed by any corporation or commission in connection therewith, and, if required, install or cause to be installed at its own expense separate meters for all such utilities;
- (p) ~~(p)~~ not carry out or do, nor allow to be carried on or done on the Licence Area any act or thing whatsoever which may be or become a nuisance or annoyance to the ~~Licensor~~Owner, any other Licensee or licensee of the ~~Licensor~~Owner or members of the public or which may invalidate or increase the premium for any policy of insurance upon or in respect of the Licence Area;
- (q) ~~(q)~~ upon the expiration or sooner ~~determination~~termination of this Licence and of the Term hereby granted, peaceably surrender and give up possession of the Licence Area to the ~~Licensor~~Owner;

(f) (f) observe and fully comply with all laws, bylaws, rules, regulations and orders in force of ~~the Canadian Transportation Agency and under the Railway Safety Act and~~ every municipality or other lawful authority or any laws, bylaws, rules, and regulations which come into force during the Term of this Licence and in the construction or location of any structure erected thereon; and not erect or permit to be erected nor permit to remain, if erected, any structure nor permit any material to be placed on the Licence Area in violation of any laws, bylaws, regulations and orders in force and indemnify and save harmless the ~~Licensor~~Owner from any and all penalties, losses, costs, expenses and damages related to,

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arising from, caused or contributed to by the non-compliance by the Licensee with such laws, bylaws, regulations and orders and which in any manner relate to or affect the Licence Area; and ensure observance and full compliance by its officers, servants, agents, employees, contractors, subcontractors, invitees and licensees, including but not limited to members of the public;

- (s) ~~(s)~~ not suffer or permit any charge or encumbrance, including any claim of ~~Builder's~~Builder's Lien ("~~Encumbrance~~") to be filed or registered against the title to the Licence Area by reason of any work, labour, services or materials supplied or claimed to have been supplied to the Licensee and in the event that such an Encumbrance shall at any time be filed against the Licence Area the Licensee shall cause the same to be discharged or vacated within thirty (30) days after the date the Licensee first has knowledge of such filing provided that if the Licensee fails to discharge such Encumbrance within such period, then, in addition to any other right or remedy of the ~~Licensor~~Licensor~~Owner~~, the ~~Licensor~~Licensor~~Owner~~ may, but shall not be obligated to, discharge such Encumbrance either by paying the amount claimed to be due thereby, or by deposit in court or by bonding, and in any such event the Licensee shall forthwith pay the ~~Licensor~~Licensor~~Owner~~ such amount provided that the Licensee shall not be required to pay or discharge any such Encumbrance if it gives notice in writing to the ~~Licensor~~Licensor~~Owner~~ of its intent and does in good faith proceed to contest the same by appropriate proceedings and provided that the Licensee furnishes a surety bond of a company satisfactory to the ~~Licensor~~Licensor~~Owner~~ in an amount sufficient to pay such contested Encumbrance claim with all interest thereon and court costs and expenses, including reasonable ~~solicitor's~~solicitor's fees on a solicitor and client basis;
- (t) ~~(t)~~ upon the expiry or earlier termination of this Licence, the Licensee shall leave the Licence Area neat, clean, level, free and clear of all waste material, debris and rubbish to the satisfaction of the ~~Licensor~~Licensor~~Owner~~ within ten (10) days. If the Licence Area is not left neat, clean, level, free and clear of all waste material, debris and rubbish as aforesaid, the ~~Licensor~~Licensor~~Owner~~ may carry out such work and the Licensee shall pay to the ~~Licensor~~Licensor~~Owner~~ all costs and expenses plus 10% incurred in so doing;
- (u) ~~(u)~~ be solely responsible for, at its own cost and expense, the removal of snow in and around the Licence Area, and to carry out snow clearing or other maintenance operations so as to not interfere with the ~~Licensor's~~railway~~Owners~~ trail operations, and that it shall pay any additional costs incurred by the ~~Licensor~~Licensor~~Owner~~ due to interference with the ~~Licensor's~~railway~~Owner's~~ trail operations caused by the ~~Licensee's~~Licensee's snow clearing and maintenance operations;
- (v) ~~(v)~~ be solely responsible for, at its own cost and expense, dust control in and around the Licence Area; and

(w) without limiting the generality of any other provision herein, fully comply with any and all environmental and archaeological regulations and obtain any and all permits that may be required by any authority having jurisdiction over the Licence Area.

7.0 ~~INSURANCE, LIABILITY AND INDEMNIFICATION~~ Insurance, Liability and Indemnification

7.1 The ~~Licensor~~Owner shall not be liable or responsible in any way for any personal injury that may be sustained by the Licensee or any invitee or licensee of the Licensee, or of any other person who may be upon the Licence Area, or for any loss of or damage or injury to any property belonging to or in the possession of the Licensee, and without limiting

the generality of the foregoing, the ~~Licensor~~Owner shall not be liable or responsible in any way for any matter or thing of whatsoever nature or kind arising from the ~~Licensee's~~Licensee's use and occupation of the Licence Area or otherwise. Notwithstanding anything contained in this ~~Licence~~Agreement, the liability of the ~~Licensor~~Owner shall, under no circumstances, extend to any consequential loss or damage or to any property. The ~~Licensor~~Owner shall not be responsible for anything lost or stolen howsoever such loss or theft occurs.

7.2 The Licensee shall indemnify and save harmless the ~~Licensor~~Owner, its directors, officers, employees, servants, agents, invitees and licensees from and against any and all loss, damages, costs, expenses, claims, liabilities, actions and proceedings by whomsoever made, brought or executed, which could not have been incurred or have arisen but for this ~~Licence~~Agreement or the ~~Licensee's~~Licensee's use of the Licence Area hereunder, including without limitation:

- (a) claims under workers' compensation legislation;
- (b) in respect of loss or damage to, or destruction of, property or personal injury, including death;
- (c) any and all loss of, damage to, or destruction of property, including the ~~Licensor's~~Owner's property and any Works; ~~and~~
 - ~~(d) (d)~~ any and all fines, expenses and costs suffered, incurred or sustained by the ~~Licensor~~Owner,
 - ~~(i)~~ by reason of the negligence of, or any act or omission of the Licensee, its servants, agents, invitees or licensees; ~~or~~and
 - ~~(ii)~~ ~~by reason of the negligence of, or any act or omission of the Licensor, its servants, agents, invitees or licensees;~~
- (e) any and all claims, suits, demands, awards, actions, proceedings, losses, costs, damages or expenses (including legal costs on a solicitor and own client basis) suffered or incurred by the Owner that arise out of, result from, are based upon or are in any way caused by a Pollutant or hazardous substance.

7.3 In the event that the ~~Licensor~~Owner shall bring any proceeding in respect of, arising from or in relation to:

- (a) ~~(a)~~ the termination of ~~the~~this Agreement;
- (b) ~~(b)~~ the recovery of any amount due under the provisions of this ~~Licence~~Agreement; ~~and~~or

(c) ~~(c)~~ the ~~Licensee's~~ Licensee's failure to observe and perform any obligation on its part under this ~~License~~ Agreement,

and shall obtain judgement against the Licensee, the Licensee shall, promptly upon demand, pay to the ~~Licensee~~ Owner all expenses incurred therefor, including all reasonable ~~solicitor's~~ solicitor's fees and expenses.

7.4 The Licensee shall during the Term of this ~~License~~ Agreement, at its cost and expense, take out and keep in full force and effect the following insurance policies:

~~(a)~~ (a) Comprehensive General Liability Insurance with an inclusive limit of not less than two million dollars (\$2,000,000.00); or any other increased amount as the ~~Licensee~~ Owner

Owner ~~7~~

may reasonably require from time to time, in respect of bodily injury, including injury resulting in death, and property damage, which policy shall specifically, by its wording or by endorsement:

(i) ~~(i)~~ extend to cover all liabilities assumed by the Licensee under this ~~Licence~~Agreement;

(ii) ~~(ii)~~ include the ~~Licensor and its associated or affiliated companies~~Owner (and the officers, directors, employees, agents and trustees of all of the foregoing) as additional insured with respect to this Licence and incidental thereto;

(iii) ~~(iii)~~ contain a ~~"cross liability"~~ clause which shall have the effect of insuring each person, firm or corporation named in the policy as an Insured in the same manner and to the same extent as if a separate policy had been issued to each; and

(iv) ~~(iv)~~ extend to cover ~~Licensee's~~Licensee's legal liability; and

~~(b)~~ ~~(b)~~ Automobile Public Liability and Property Damage Insurance with an inclusive limit of

not less than two million dollars (\$2,000,000.00), or any other increased amount as the ~~Licensor~~Owner may reasonably require from time to time, in respect of the ownership, use and operation of each motor vehicle and trailer owned, leased or controlled by the Licensee.

7.5 The Licensee shall take out and maintain the insurance coverage stipulated in paragraph 7.4 with one or more insurers of ~~recognised~~recognized net worth and reputation that are duly licensed to carry on the business of insurer in all provinces of Canada, except with respect to Automobile Public Liability and Property Damage Insurance which may be taken out and maintained with an insurer duly licensed to carry on the business of insurer in British Columbia only, and in such form as is normally effected by prudent Licensees in similar circumstances.

7.6 The Licensee shall ensure that the insurance policy required in paragraph 7.4 (a) provides that the Insurer shall give 30 days' prior written notice to the ~~Licensor~~Owner in the ~~even~~event the policy is to be materially altered or cancelled.

7.7 The Licensee shall also furnish the ~~Licensor with one or more~~Owner with copies of the insurance policies or certificates of insurance evidencing all coverage stipulated in paragraph 7.4 concurrently with the annual rent. Notwithstanding the foregoing, the ~~Licensor~~Owner shall not be obligated to examine such certificate(s) of insurance or to advise the Licensee of non-compliance in the event any insurance coverage does not comply with the requirements stipulated in paragraph 7.4.

~~7.6~~7.8 The Licensee acknowledges and agrees that the amount of insurance coverage required by it under the provisions of this ~~License~~Agreement shall not be construed and shall in no manner limit or restrict the liability of the Licensee.

~~7.7~~7.9 The Licensee acknowledges and agrees that in the event that it allows the insurance ~~policy taken~~ policies required ~~out by it~~ under paragraph 7.4 ~~is allowed~~ to lapse during the Term of this ~~License~~Agreement or any renewal of it, this ~~License~~Agreement shall terminate immediately without any notice being given to the Licensee by the ~~Licensee~~Owner.

~~7.8~~7.10 Paragraphs 7.1 to ~~7.7~~7.9 inclusive shall survive the expiration or earlier termination of this ~~License~~Agreement.

8.0 ~~ENVIRONMENTAL~~Environmental

8.1 In this ~~Licence~~Agreement:

- (a) ~~“Environmental Laws”~~ means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the lands in force with respect, in any way, to the environment, health or occupational health and safety, including with respect, in any way, to the protection of people, plants, animals, natural ecosystems and the natural environment (including in the context of the development of land, workplace safety and otherwise), and including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time;
- (b) ~~“Pollutant”~~ means any substance which is capable of causing pollution or contamination to air, land, water and ground water and includes, without limitation, explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphenyls, hydrocarbon contaminants, underground tanks, pollutants, contaminants, hazardous, corrosive or toxic substances, special waste, waste of any kind and all substances defined as ~~“Waste”~~ in the *Environmental Management Act*;
- (c) ~~“Releasing”~~ means discharging, spraying, abandonment, depositing, spilling, leaking, seeping, pouring, emission, dumping and placing and ~~“Release”~~ and ~~“Released”~~ shall have corresponding meanings; and
- (d) ~~“Environmental Management Act”~~ means the *Environmental Management Act*, S.B.C. 2003, c. 53, as amended from time to time, and the regulations enacted under it, as amended from time to time, or any Act or regulations enacted in substitution of the *Environmental Management Act* or the regulations enacted under it.

8.2 The Licensee shall not bring, keep or store or permit to be brought, kept or stored in or upon the Licence Area or adjacent lands any Pollutants except as may be reasonably required from time to time in connection with the operations carried out by the Licensee on the Licence Area if first approved in writing by the ~~Licensor~~Owner and in accordance with such approval and Environmental Laws.

8.3 The Licensee shall not do, cause, suffer or permit to be done or fail to do, cause, suffer or permit to be done on the Licence Area or adjacent lands any act or thing which may result in an unsafe, unhealthy or environmentally unsound condition, activity or Release.

8.4 If there is reasonable cause to believe the ~~Licensee's~~Licensee's use could result in an event referred to in paragraph 8.5 the Licensee must maintain a current emergency response

plan to address any such event and make it available to the ~~Licensee~~Owner upon request.

8.5 The Licensee shall immediately give written notice to the ~~Licensee~~Owner of any event on or affecting the Licence Area or adjacent lands as a result of the activities of the Licensee or the ~~Licensee's~~Licensee's invitees, licensees, contractors or subcontractors activities or operations, that constitutes an offence under or which is reportable under any

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Environmental Laws, results in breach thereof, or results in a Release of a Pollutant on the Licence Area or adjacent lands. In the event the Licensee becomes aware of any such event it shall immediately notify the ~~Licensor's designated supervisor in charge or the Yard Manager (24-hour position~~ Owner (at Monday to Friday between the hours of 8:00 AM and 4:30 PM; after hours at) and/or any such other number as directed by the Owner in writing). A preliminary incident report describing immediate corrective action taken and planned must be completed by the Licensee and forwarded to the designated ~~Licensor's~~ Owner's supervisor in charge within 24 hours of the incident. Follow-up reports must be submitted to the ~~Licensor~~ Owner within seven (7) days or as required by the ~~Licensor's~~ Owner's designated supervisor.

8.6 If an event referred to in paragraph 8.5 occurs, whether or not it is reported, the Licensee shall promptly comply with all orders and requirements of the ~~Licensor~~ Owner and of any government authority, board or court having jurisdiction relating to the event and to the clean up or remediation of the Licence Area, portion of the Licence Area or, adjacent lands required as a result thereof under or to meet the standards set by Environmental Laws. The Licensee shall promptly remove any Pollutant that may have been ~~Released~~ released in, under or upon the Licence Area or adjacent lands as a result of that event and carry out any clean up or remediation required as a result of such event under or to meet the standards set by Environmental Laws and without limitation shall:

(a) ~~(a)~~ commence and complete, at its sole risk and expense, such clean up and remediation;

(b) ~~(b)~~ dispose of any contaminated soil or Pollutant in a properly licensed disposal facility;

(c) ~~(c)~~ replace any contaminated soils with clean fill as appropriate under the circumstances;

(d) ~~(d)~~ obtain such certification under the *Environmental Management Act* in respect of such clean up or remediation as is required by the ~~Licensor~~ Owner, acting reasonably; and

(e) ~~(e)~~ in the case that the ~~Licensor~~ Owner and the Licensee are in disagreement as to whether any clean up or remediation has been completed, as to whether the contaminated soil or Pollutant has been properly disposed of or whether or not contaminated soils have been replaced with appropriate clean fill all in accordance with the foregoing:

(i) ~~(i)~~ retain, at its sole cost and expense, a reputable environmental consulting firm approved in writing by the ~~Licensor~~ Owner, acting reasonably, to review the ~~Licensee's~~ Licensee's activities and report whether the Licensee has fulfilled such obligations; and

(ii) ~~(ii)~~ if the ~~Licensee's~~Licensee's obligations have not been fulfilled, take such further action as is necessary to rectify any deficiencies and obtain a report from such environmental consultant, at its sole cost and expense, verifying same.

8.7 The Licensee shall indemnify and save harmless each of the ~~Licensor~~Owner and its directors, officers, employees and agents from any fines, penalties or expenses levied or charged

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against it by any governmental authority, court or board pursuant to Environmental Laws, which result from or arise from the act or omission of the Licensee.

8.8 The covenants contained in ~~articles~~Articles 8.1 to and including 8.7 shall survive the expiry or earlier termination of this ~~Licence~~Agreement.

9.0 ~~MUTUAL COVENANTS~~Mutual Covenants

9.1 The ~~Licensor~~Owner and the Licensee mutually covenant that:

- (a) the whole contract and agreement between the Parties is set forth in this ~~Licence and Upland Consent~~Agreement and the Licensee has licensed the Licence Area ~~"as is"~~ after examining the same and no representations, warranties, or conditions have been made by the ~~Licensor~~Owner other than those expressed in this ~~Licence and Upland Consent~~Agreement and no representations, warranties or conditions shall be binding upon the ~~Licensor~~Owner unless made in writing and signed by the Parties;
- (b) the ~~Licensor~~Owner shall not be responsible for any defect in or change of conditions affecting the Licence Area or for any defect of the ~~Licensor's~~Owner's title or for any damage to the Licence Area or to any person or merchandise, goods, chattels, machinery or equipment contained in the Licence Area howsoever caused;
- (c) ~~(e)~~ if the ~~Licensor~~Owner shall suffer or incur any damage, loss or expense or be obliged to make any payment for which the Licensee is liable under this ~~Licence and Upland Consent~~Agreement by reason of any failure of the Licensee to observe and comply with any of the covenants of the Licensee contained in this ~~Licence and Upland Consent~~Agreement then the ~~Licensor~~Owner shall have the right to add the amount of any such loss, expense or payment to the ~~Fees~~Fee hereby reserved, and any such amounts shall thereupon ~~immediately~~ be due and payable;
- (d) ~~(d)~~ in the event that:
 - (i) the Owner in its sole and absolute discretion determines that the Licence Area is required by the Owner for any purpose including, but not limited to, planning, development, construction or use as a public trail or for any other public purposes;

- (ii) ~~(i)~~ this ~~Licence and Upland Consent~~Agreement or any of the goods and chattels of the Licensee on the Licence Area liable to distress shall be seized or taken in execution or in attachment by any creditor of the Licensee;
- (iii) ~~(ii)~~ the Licensee shall become bankrupt or insolvent or make an assignment for the benefit of creditors ~~or to~~ take the benefit of any Act that may be in force for bankrupt or insolvent debtors;
- (iv) ~~(iii)~~ an order shall be made or proceedings taken for the winding up of the Licensee;
- (v) ~~(iv)~~ there shall be any default in the payment of fees, or any other payment due under this ~~Licence~~Agreement, in the amount and at the time provided ~~in this Licence~~; or, if no time for payment is otherwise provided in this ~~Licence and Upland Consent~~Agreement , within fifteen (15) days of demand in writing by the Owner;

Licensor;

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(vi) ~~(v)~~ there is any breach, non-observance or non-performance by the Licensee of any obligation on its part hereunder to be kept, performed or observed and the Licensee does not commence the curing of such breach, ~~nonobservance~~non-observance or non-performance within fifteen (15) days of the LicensorOwner giving the Licensee written notice of it and thereafter diligently and continuously prosecute the curing of such breach until fully and completely cured; or

(vii) ~~(vi)~~ the Licence Area or any part be used by any other person or persons for any purpose other than as provided for in this Licence and Upland ConsentAgreement without the written consent of the LicensorOwner,

then, and in any such event, the LicensorOwner shall be at liberty to terminate this Licence and Upland ConsentAgreement immediately upon notice in writing to the LicensorLicensee;

(e) the LicensorOwner may, at any time and from time to time and without compensation to the Licensee, enter upon the Licence Area and do any work required by this Licence and Upland ConsentAgreement or required by any governmental authority or for such other purpose as the LicensorOwner may deem necessary for the protection of its interests in the Licence Area;

(f) ~~(f)~~ in the event the use of the Licence Area by the Licensee is causing danger to the public or the Licensor's LandOwner's Lands, the LicensorOwner, or hisits representative, may order the Licensee'sLicensee's Use to be halted until the danger to the public or the Licensor's LandOwner's Lands is eliminated;

~~(g) it is understood and agreed that portions of the Licence Area may consist of roadways or rights-of-way used by the Licensor and third parties for the purpose of gaining access to adjoining land, and the Licensee agrees that such roadways or rights-of-way may be used for such purpose, jointly with the Licensee. The Licensor hereby confers the right and authority and imposes the obligation upon the Licensee to ensure that such usage is reasonable at all times. The Licensee agrees not to use such roadways or rights-of-way for storage or parking that would prevent access at all times for vehicular traffic;~~

(g) ~~(h)~~ all improvementsImprovements placed, erected or built on or into the Licence Area by the Licensee with the Licensor'sOwner's approval as set forth above shall be and remain part of the Licence Area providing that the LicensorOwner may direct the Licensee to remove all or any part of the Improvements from the Licence Area within sixty (60) days after the termination or surrender of this Licence and Upland ConsentAgreement. The Licensee covenants that it shall remove such of the Improvements as directed by the LicensorOwner and shall make good all damages caused to the Licence Area or any property of the LicensorOwner by such removal. If such Improvements are not so removed by the Licensee as aforesaid within the said period of sixty (60) days, then the LicensorOwner may carry out such work and the Licensee shall pay to the LicensorOwner all costs and expenses incurred in so doing.

10.0 ~~GENERAL PROVISIONS~~ Superseding Agreement

10.1 It is understood and agreed that this Agreement cancels and supersedes all previous Licence and Upland Consent agreements, including the agreement identified in File Ref: _____, dated for reference purposes January 1, 2016, between _____

11.0 General Provisions

~~40.4~~**11.1** The failure of the LicensorOwner to insist upon strict performance of any covenant or condition contained in this LicenceAgreement or to exercise any right or option under this LicenceAgreement will not be construed or operate as a waiver or relinquishment for the future of that covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by the LicensorOwner.

~~40.2~~**11.2** Time is of the essence of this ~~Licence and Upland Consent~~Agreement.

~~40.3~~**11.3** The captions, article numbers and paragraph numbers appearing in this ~~Licence and Upland Consent~~Agreement are inserted for convenience only and do not affect the interpretation of it.

~~40.4~~**11.4** Wherever the singular or the masculine is used in this ~~Licence and Upland Consent~~Agreement it will be construed to mean the plural, or feminine, or the body politic or corporate, where the circumstances require.

~~40.5~~**11.5** This ~~Licence and Upland Consent~~Agreement is to enure to the benefit of, and is binding upon, the parties and their respective successors and permitted assigns.

~~40.6~~**11.6** If any of the provisions in this ~~Licence and Upland Consent~~Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, it is to be considered severable from this LicenceAgreement, and the remaining provisions of this ~~Licence and Upland Consent~~Agreement will remain in full force and be binding upon the parties.

~~40.7~~**11.7** This LicenceAgreement is to be governed by and in accordance with the laws of British Columbia and Canada.

~~40.8~~**11.8** This ~~Licence and Upland Consent~~Agreement may not be modified or amended except in writing signed by the parties.

~~40.9~~**11.9** The entire agreement between the parties is contained in this ~~Licence and Upland Consent~~Agreement and the LicensorOwner, other than those expressed in this ~~Licence and Upland Consent~~Agreement, has made no representations or warranties and no representations or warranties shall be binding upon the LicensorOwner unless made in writing and signed by the parties.

~~10.10~~ 11.10 Any notice, demand or request which may be, or is required, to be given pursuant to this ~~Licence and Upland Consent~~ Agreement shall be made in writing and may be either delivered personally, or sent by prepaid courier, ~~or~~ prepaid registered mail ~~or by~~, facsimile ~~transmission~~ or email and

(a) ~~(a)~~ in the case of the ~~Licensor~~ Owner addressed to:

And

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(b) (4) in the case of the Licensee addressed to:

such other address or addresses as the parties may from time to time give notice. Any notice, demand or request sent by pre-paid registered ~~mailed~~mail shall be deemed to have been delivered on the ~~second~~fourth business day following the day of mailing. Any notice that is posted, ~~or,~~ delivered personally, by courier or by email or facsimile will be considered delivered on the date of that posting or delivery.

~~AGREED TO AND ACCEPTED BY:~~

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto:

The Corporate Seal of the

LICENSEE

- was hereunto affixed in the presence of:

CHIEF ADMINISTRATIVE OFFICER
(CAO)

AUTHORIZED SIGNATORY

Witness Signature

The Corporate Seal of the

was hereunto affixed in the presence of:

CHIEF ADMINISTRATIVE OFFICER
(CAO)

Witness Name (Please Print)

Witness Address

SCHEDULE A

LEGAL DESCRIPTION

All that unsurveyed Crown foreshore being part of

more or less

, containing

| **Authorized natory**

| **SCHEDULE B.**

Authorized Signatory

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