

ADMINISTRATIVE AGREEMENT

This Agreement dated this 3rd day of MARCH, 2004.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, represented
by the Minister of Community, Aboriginal and
Women's Services

(the "Province")

AND:

BRITISH COLUMBIA SAFETY AUTHORITY,
incorporated pursuant to the *Safety Authority Act*
SBC 2003, c. 38

(the "BCSA")

WHEREAS:

- A. The Province wishes to maintain and enhance public safety, be responsive to client needs, and promote competitiveness in the British Columbia economy;
- B. Section 6(1) of the *Railway Safety Act* provides for the delegation to an authority of the administration of some of the provisions of that Act;
- C. The BCSA, incorporated under the *Safety Authority Act*, wishes to accept such a delegation and to provide rail safety services to the public with respect to industrial, commuter and groups 1 and 2 common carrier rail operations regulated under the *Railway Safety Act*; and
- D. The parties wish to enter into this Agreement for the purpose of establishing the rights and responsibilities of the parties and the terms and conditions for the delegation to the BCSA of administration of provisions of the *Railway Safety Act* specified in the Delegation Regulation.

NOW THEREFORE in consideration of the premises and the covenants, agreements, representations, and warranties set out in this Agreement, the parties agree as follows:

ARTICLE 1

DEFINITIONS

1.01 In this Agreement, unless the context otherwise requires, the following definitions apply:

“Act” means the *Railway Safety Act* and includes all regulations enacted under it;

“Agreement” means this agreement and includes the recitals and the schedules to this agreement;

“Completion Date” means April 1, 2004 or such other time and date as the parties agree upon in writing;

“Delegation Regulation” means a regulation in the form attached as Schedule “A”, and includes any amendments made to that regulation from time to time;

“Former Act” means the *Railway Act* repealed under the Act;

“Former Ministry Employees” means all employees of the Province who, on or before March 31, 2004, accept offers of employment with the BCSA;

“Ministry” means the Ministry of Community, Aboriginal and Women’s Services and includes any successor ministry to that ministry;

“New Records” means all Records obtained or created by the BCSA in the course of carrying out its administration of the provisions of the Act specified in the Delegation Regulation but does not include Transferred Records;

“Provincial Records” means all Records obtained or created by or for the Province in administering the Former Act and the Act and includes Transferred Records;

“Records” means records as defined in the *Interpretation Act*;

“Term” means the period described in section 4.01 and includes any renewal period under section 4.02; and

“Transferred Records” means those Provincial Records determined by the Province to be necessary for the BCSA to carry out its administration of the provisions of the Act specified in the Delegation Regulation and transferred by the Province to the custody of the BCSA.

1.02 Words and phrases used in this Agreement and defined in the Act will be given the same meaning in this Agreement as they are given in the Act.

1.03 The schedules to this Agreement are:

Schedule “A” - Delegation Regulation

Schedule “B” - Performance Objectives and Targets

Schedule “C” - Business Plan and Annual Report Requirements

Schedule “D” - Requirements for Custody and Maintenance of Provincial Records and New Records.

ARTICLE 2

PURPOSE OF THE AGREEMENT

2.01 The purpose of this Agreement is to satisfy the requirements of section 5 of the Act and to establish the rights and responsibilities of the parties in respect of the delegation to the BCSA of the administration of provisions of the Act specified in the Delegation Regulation.

ARTICLE 3

SAFETY OUTCOMES AND PERFORMANCE OBJECTIVES

3.01 The BCSA agrees with the Province that the safety outcomes of the railway safety system in British Columbia are:

- (a) to achieve operational excellence in the administration of the Act;
- (b) to promote activities which will enhance public safety;
- (c) to be responsive to the specific needs of individual clients and client groups; and
- (d) to promote and encourage harmonization of technical safety standards and establish a leadership role for British Columbia in national railway safety forums.

- 3.02 The BCSA agrees with the performance objectives and targets of the safety system in British Columbia established by the Province and described in Schedule "B".

ARTICLE 4

TERM

- 4.01 Notwithstanding the actual date of execution and delivery of this Agreement, the term of this Agreement commences on April 1, 2004 and ends on December 31, 2013, subject to renewal pursuant to section 4.02.
- 4.02 The Term will be automatically renewed for successive periods of five years each unless either party gives written notice of termination in accordance with the provisions of section 15.02 of this Agreement.
- 4.03 The parties will review this Agreement within 60 days after every third anniversary of the first day of the Term, including any renewal of the Term under section 4.02.

ARTICLE 5

DELEGATED ADMINISTRATION

- 5.01 Upon execution of this Agreement, the Province will recommend the enactment of the Delegation Regulation to the Lieutenant Governor in Council pursuant to section 6(1) of the Act.
- 5.02 Effective upon the Delegation Regulation being brought into force, the BCSA accepts responsibility for the administration of the provisions of the Act specified in the Delegation Regulation, including all duties and powers included in those provisions.

ARTICLE 6

OBLIGATIONS OF THE PARTIES

- 6.01 The Province will consult and work collaboratively with the BCSA as the Province deems necessary and appropriate in respect of current and proposed legislation, government policy, or other railway safety related issues which may directly impact the BCSA's administration of the provisions of the Act specified in the Delegation Regulation.

6.02 The Province may:

- (a) subject to section 6(2) of the Act, amend the Act as it deems appropriate;
- (b) enact regulations under the Act as it deems appropriate;
- (c) review the activities and operations of the BCSCA, including its annual report and its audited financial statements, in relation to its administration of the provisions of the Act specified in the Delegation Regulation and in accordance with the safety outcomes and performance objectives established in Article 3; and
- (d) at its discretion and at the expense of the BCSCA, retain independent auditors to conduct an audit of the business and operations of the BCSCA.

6.03 The BCSCA will:

- (a) carry out its administration of the provisions of the Act specified in the Delegation Regulation in accordance with this Agreement, the *Safety Authority Act* and the Act;
- (b) work collaboratively with the Province on all matters in respect of its administration of the provisions of the Act specified in the Delegation Regulation;
- (c) work collaboratively with the Province in respect of the matters described in section 6.01;
- (d) carry out its administration of the provisions of the Act specified in the Delegation Regulation to a standard which meets or exceeds the care, skill, diligence, professionalism and timeliness exercised by the Province in its administration of the Former Act;
- (e) provide technical safety expertise to the Province in such form and manner as may be required for safety related legislative, regulatory and policy initiatives and amendments;
- (f) work with other provincial governments, and the government of Canada and its compliance monitoring agencies in revising or

developing codes related to the administration of the provisions of the Act specified in the Delegation Regulation;

- (g) develop a system for the implementation of the performance objectives identified in section 3.02;
- (h) in accordance with sections 28 and 29 of the *Safety Authority Act* include the planned activities of the Railway Safety Program in a three year business plan and annual report both of which meet the requirements described in Schedule "C"; and
- (i) for the purposes of section 6.02(d), provide access to the Province and its employees to the BCSA's offices and records.

6.04 The Province may, upon reasonable notice to the BCSA,

- (a) require the BCSA to provide reports to the Province in addition to those required under section 6.03(h), or
- (b) waive the requirement for the BCSA to provide a report under section 6.03(h).

ARTICLE 7

COMMUNICATIONS

- 7.01 The parties will establish, on or before April 30, 2004, a written communications protocol for managing critical railway safety issues under the Act.
- 7.02 Any public announcement relating to this Agreement made by either party must be arranged in consultation with the other before the announcement is made.

ARTICLE 8

FINANCIAL TERMS

- 8.01 The BCSA will ensure that it has adequate financial and other resources to carry out its obligations under this Agreement and its administration of the provisions of the Act specified in the Delegation Regulation, all in accordance with its business plan.

- 8.02 The BCSA will establish a fee setting process in accordance with section 19(1) of the Act and the criteria established in any regulation enacted pursuant to section 21(2)(e) of the Act and follow such process and criteria in setting any fees to be paid to the BCSA in respect of its administration of the provisions of the Act specified in the Delegation Regulation.

ARTICLE 9

HUMAN RESOURCES

- 9.01 The Province will be responsible for all wages, bonuses, earned vacations, sick leave, severance pay and other remuneration and employee benefits of any kind whatsoever (including employers' contributions and accrued benefits obligations under any pension or other benefit plans) for all Former Ministry Employees relating to and for any period of time up to and including March 31, 2004.
- 9.02 The Province will transfer all employee time banks for all Former Ministry Employees as at March 31, 2004, together with the requisite funding to the BCSA on April 1, 2004. The BCSA will credit all Former Ministry Employees with their respective time banks.
- 9.03 Effective from and after April 1, 2004 the BCSA is responsible for all wages, bonuses, earned vacations, sick leave, severance pay, and other remuneration and employee benefits of any kind whatsoever including employers' contribution and accrued benefits obligations to any pension or other benefit plans for all Former Ministry Employees who accept offers of employment with the BCSA on or before April 1, 2004.
- 9.04 The Province is responsible for all costs arising out of the placement or separation from employment of an employee of the Province who is not a Former Ministry Employee.
- 9.05 The Province is responsible for conducting, and shall indemnify and save harmless, the BCSA for all financial liabilities arising out of any outstanding employee disputes resulting from decisions made by the Province, including grievances, arbitration proceedings or awards, recruitment appeals, and classification appeals arising out of any events or circumstances which occurred prior to April 1, 2004 by any Former Ministry Employee. The Province is not responsible for any financial liabilities arising out of any decisions by the BCSA to revoke or terminate offers of employment made by the BCSA to Former Ministry Employees and accepted by Former Ministry Employees prior to April 1, 2004.

- 9.06 A Former Ministry Employee, as an employee of the BCSA, will have those rights and obligations outlined in the offer letters made by the Province and the BCSA Former Ministry Employees.

ARTICLE 10

RECORDS AND ACCESS

- 10.01 Subject to this Agreement, ownership of Provincial Records will remain with the Province.
- 10.02 Despite section 10.01, the Province transfers to the BCSA, effective as of first day of the Term, custody and control of the Transferred Records and BCSA may use them for its legitimate purposes in its administration of the provisions of the Act specified in the Delegation Regulation.
- 10.03 Despite section 10.01, the Province will provide the BCSA with access to Provincial Records that are not Transferred Records and the BCSA may use such records for its legitimate purposes in its administration of the provisions of the Act specified in the Delegation Regulation.
- 10.04 The BCSA will manage the Transferred Records in accordance with the requirements in Schedule "D".
- 10.05 The Province's right to solicitor and client privilege with respect to Provincial Records is not waived in any manner by the provision of the Transferred Records to the BCSA.

ARTICLE 11

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT REQUESTS

- 11.01 The parties agree that the BCSA has custody and control, for the purposes of the *Freedom of Information and Protection of Privacy Act*, of all Transferred Records and New Records.
- 11.02 If the Province receives a request for access to a Transferred Record or a New Record under the *Freedom of Information and Protection of Privacy Act* after March 31, 2004 in respect of a matter in which it has been or is involved under the Act, the Former Act, or this Agreement, the Province will transfer the request to the BCSA in accordance with section 11 of the *Freedom of Information and Protection of Privacy Act*.
- 11.03 Pursuant to section 66 of the *Freedom of Information and Protection of Privacy Act*, the Minister of Community, Aboriginal and Women's Services,

as signatory to this Agreement, hereby delegates to the BCSA the duties and powers necessary for the BCSA to carry out the functions required under the *Freedom of Information and Protection of Privacy Act* with respect to the Provincial Records that are not Transferred Records.

- 11.04 Upon receipt by the BCSA of a transfer of a request under section 11.02, the BCSA will respond to such request in accordance with the *Freedom of Information and Protection of Privacy Act*.
- 11.05 Any requests received by the Province prior to April 1, 2004 for access to a record under the *Freedom of Information and Protection of Privacy Act* in respect of a matter in which it has been or is involved under the Act or the Former Act will be responded to and completed by the Province.
- 11.06 The parties will provide reasonable ongoing assistance to each other in respect of any request for access to a record under the *Freedom of Information and Protection of Privacy Act* referred to in sections 11.02 and 11.04, including assistance in respect of any appeals or other actions taken in respect of such a request.
- 11.07 The parties may develop further protocols as to requests for access to records made under the *Freedom of Information and Protection of Privacy Act* in respect of any matter in which the Province has been or may be involved under the Act, the Former Act, or this Agreement.
- 11.08 The Province's right to solicitor client privilege is not waived by the delivery of the Transferred Records to the BCSA or by the provision of access to Provincial Records by the BCSA with respect to the processing of requests under the *Freedom of Information and Protection of Privacy Act* by the BCSA.

ARTICLE 12

ADMINISTRATIVE CODE OF FAIR CONDUCT

- 12.01 The BCSA will establish and implement a corporate administrative code of fair conduct to ensure transparency and fairness in all aspects of its interaction with stakeholders, employees and the public.
- 12.02 The BCSA must implement the code referred to in section 12.01 on or before April 1, 2005.
- 12.03 Prior to implementing the code referred to in section 12.01, the BCSA must ensure that its directors, officers, employees and appointees comply with the *Standards of Conduct for Public Services Employees* in the same

manner as if each of them is a person appointed under the *Public Service Act* during the period of time to which this section applies.

ARTICLE 13

LITIGATION

- 13.01 Civil and administrative litigation, including inquests, related to the Act or the Former Act in which the Province is a defendant or an interested party, which was commenced prior to the date the Delegation Regulation comes into force or which was commenced after that date but which relates in whole or in part to any act or omission, or to any alleged act or omission by the Province, prior to that date, will be defended or otherwise carried out by the Province unless the parties expressly agree otherwise, and the Province will be responsible for all costs of the litigation and for the payment of any damages, subject to any order of a court or tribunal of competent jurisdiction or to any agreement of the parties.
- 13.02 The BCSA will cooperate with the Province for the purpose of the Province's defence or other participation in the litigation referred to in section 13.01, including, without limitation, providing, at no cost to the Province, documentation, information and witnesses in such litigation, where appropriate.
- 13.03 Civil and administrative litigation, including inquests, related to the Act in which the Province is a defendant or an interested party, as a result of any alleged act or omission of the BCSA in its administration of provisions of the Act specified in the Delegation Regulation and which was commenced after the date the Delegation Regulation came into force, will be defended or otherwise carried out by the BCSA, unless the parties expressly agree otherwise. The BCSA will be responsible for all costs of the litigation and for the payment of any settlement costs agreed to and payable by it and any damages awarded against it as a result of any act, omission or fault of the BCSA, subject to any order of a court or tribunal of competent jurisdiction or to any agreement of the parties. The parties agree that the Province reserves the right to defend or otherwise carry out any such litigation on its own behalf and at its own cost where it determines that it has an independent interest in the litigation.
- 13.04 Any proceedings, and any civil, criminal or administrative litigation, including inquests, not related to the administration of provisions of the Act specified in the Delegation Regulation, in which the Province is a defendant or an interested party, arising from or in any way connected with any activity undertaken by, or any alleged act or omission of the BCSA will be defended or otherwise carried out by the BCSA. The BCSA

will be responsible for all costs of the proceedings or litigation and for the payment of any settlement costs agreed to and payable by it and any damages awarded against it. The parties agree that the Province reserves the right to defend or otherwise carry out any such proceedings or litigation on its own behalf and at its own cost where it determines that it has an independent interest in the proceedings.

13.05 The Province will, where appropriate, cooperate with the BCSA for the purpose of the BCSA's defence or other participation in the proceedings and litigation referred to in sections 13.03 and 13.04 including, without limitation, providing documentation, information and witnesses in such proceedings or litigation at no cost to the BCSA.

13.06 The BCSA will keep the Province informed of any proceedings or litigation by or against the BCSA or in which the BCSA is an interested party that may affect the interests of the Province.

ARTICLE 14

CONDITIONS PRECEDENT

14.01 The commencement of the Term is subject to the satisfaction on or before the Completion Date of the following conditions:

- (a) the Delegation Regulation has been enacted and brought into force with effect on or before April 1, 2004; and
- (b) all insurance that the BCSA is required to provide and maintain under this Agreement has been obtained.

14.02 The conditions set out in section 14.01 are for the benefit of both parties and may be waived in whole or in part on or before the Completion Date only by a written waiver to that effect signed by both parties.

ARTICLE 15

TERMINATION OF THIS AGREEMENT

15.01 Without limiting the powers of the Province under the Act or otherwise, the termination of this Agreement and the BCSA's authority to administer the Act may result from a decision of the BCSA to wind-up or cease to operate as a safety authority, the insolvency or bankruptcy of the BCSA, or the failure of the BCSA to comply with the Act or this Agreement.

- 15.02 Either party may terminate this Agreement on six (6) months prior written notice of termination to the other party.
- 15.03 To ensure that the public interest is always protected, in the event of a notice of termination being delivered by either party, the Province and the BCSA shall develop a termination plan that shall include but not be limited to the following:
- (a) a list of the BCSA's assets and liabilities;
 - (b) a provision for the transfer of the administration of the Act and the transfer of the BCSA's assets and liabilities to the Province or to any successor administrative authority; and
 - (c) a provision dealing with the status and employment of the employees of the BCSA.

ARTICLE 16

INDEMNITY AND RELEASE

- 16.01 The BCSA will indemnify and save harmless the Province, its servants, employees, contractors and agents, from and against any and all claims, demands, losses, costs, damages, actions, suits or other proceedings suffered or incurred by or brought against the Province attributable to or arising out of anything done or omitted to be done by the BCSA, its directors, appointees, officers, employees, contractors or agents under or in connection with:
- (a) the BCSA's administration of the provisions of the Act specified in the Delegation Regulation; and
 - (b) this Agreement.

ARTICLE 17

INSURANCE

- 17.01 The BCSA will, without limiting its obligations or liabilities under this Agreement and at its own expense, provide and maintain the following insurances with insurers licensed in British Columbia and in forms and amounts acceptable to the Province:
- (a) commercial general liability insurance with a limit of liability not less than ten million dollars (\$10,000,000) per occurrence, or such

higher amount deemed necessary by the BCSA to fully insure against liability of the activities and operations conducted by the BCSA, any person performing work on behalf of the BCSA, and those others for whom the BCSA is in law responsible. This policy will name the Province as additional insured, contain a severability of interests clause and cross-liability clause and contain an undertaking by the insurers to notify the Province in writing not less than thirty (30) days before any material change, cancellation or termination of the policy;

- (b) any other insurance as the Province, acting reasonably, may require from time to time under section 17.11.

17.02 All policies of insurance required under this Article will be primary and not require the sharing of any loss by any insurer of the Province.

17.03 If the BCSA is not providing blanket professional liability insurance for its eligible professional employees, the BCSA shall ensure that each eligible professional employee carries their own professional liability insurance in an amount generally acceptable in the industry in which the employee is working.

17.04 Upon the issue of and upon every renewal of a policy of insurance required under this Article, and otherwise upon request by the Province, the BCSA will deliver to the Province a "Province of British Columbia Certificate of Insurance", or if requested by the Province, a certified copy of the policy of insurance or other satisfactory evidence of adequate insurance. No review or approval of any insurance certificate or insurance policy by the Province derogates from or diminishes the Province's rights or the BCSA's liability under this Agreement.

17.05 Any of the policies of insurance required under this Article may provide that the amount payable in the event of any loss will be reduced by a deductible amount designated by the BCSA and approved by the Province, such approval not to be unreasonably withheld. The BCSA will be a co-insurer to the extent of the amount deducted from the insurance moneys paid in the event of any loss, and the amount will, for the purposes of section 17.06 be included as part of the insurance moneys payable and paid.

17.06 If any of the policies of insurance required under this Article contain any co-insurance clauses, the BCSA will maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Province or the BCSA from becoming a co-insurer under the terms of such policy or policies and to permit full recovery from the insurer in the event of loss.

17.07 The BCSA will comply promptly with the requirements of all policies of insurance required under this Article and will not do or permit anything to be done that results in the cancellation or threatened cancellation or the reduction of coverage or threatened reduction of coverage under any such policy.

17.08 If the BCSA fails to effect the restoration, reconstruction, or replacement of any loss or damage in respect of which insurance moneys are payable, without unreasonable delay, the Province will be entitled to effect such restoration, reconstruction, or replacement and the BCSA will cause the mortgagee or any other person to whom such insurance moneys are payable to pay or cause to be paid to the Province such insurance moneys in the same manner the mortgagee or other person would have done had the BCSA effected such restoration, reconstruction, or replacement.

17.09 The BCSA will pay or cause to be paid all of the premiums under the policies of insurance required under this Article as they become due and payable, and if the BCSA does not do so, the Province may, but is not obligated to, do so.

17.10 If the BCSA at any time during the Term fails to provide and maintain any insurance required under this Article, the Province, although not obligated to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Province deems advisable.

17.11 The Province may, from time to time, by notice to the BCSA require the BCSA to:

- (a) change the amounts of the insurances required to be provided and maintained under this Article; or
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained under this Article;

and the BCSA will, within 90 days of receiving such notice, cause the amounts of the insurances to be changed or new types of insurance to be obtained and to deliver to the Province a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by the BCSA under this Article.

17.12 If the Province imposes an obligation on the BCSA by way of legislative or regulatory amendments, including without limitation by way of

amendments to the Delegation Regulation, which gives rise to exposure to liability on the part of the BCSA for which the BCSA cannot reasonably obtain appropriate liability insurance, the BCSA will provide immediate notice to the Province in writing of the uninsured risk and the BCSA and the Province will identify appropriate measures to resolve the issue to the satisfaction of both parties.

ARTICLE 18

DISPUTE RESOLUTION

18.01 If there is a dispute between the parties under this Agreement, either party may by written notice to the other refer the dispute for resolution in the first instance to the Assistant Deputy Minister of the Ministry, on behalf of the Province, and to the Chief Executive Officer of the BCSA, on behalf of the BCSA, who will each use reasonable efforts to resolve the dispute within the period of 14 days following the date it was referred to them.

18.02 If a dispute between the parties under this Agreement cannot be resolved in accordance with section 18.01, the dispute will be referred by the parties to a single arbitrator and be finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre in accordance with the Domestic Commercial Arbitration Rules of Procedure of the Centre, as amended from time to time.

18.03 The place of arbitration will be Victoria, British Columbia.

18.04 The arbitration will be conducted in private and the parties will use their best efforts to keep confidential

- (a) all materials submitted,
- (b) all evidence tendered, and
- (c) the decision rendered by the arbitrator,

except where required by law or where the parties otherwise agree to waive such confidentiality.

ARTICLE 19

AMENDMENTS

19.01 This Agreement may be amended only by further written agreement between the parties.

ARTICLE 20

PUBLIC DOCUMENT

20.01 Effective from and after the Completion Date, this Agreement and any subsequent amendments to this Agreement will be public documents which may be disseminated by either party to any person and by any means.

ARTICLE 21

MISCELLANEOUS

21.01 Neither party will, in any manner whatsoever, commit or purport to commit the other party to the payment of any money to any person.

21.02 No partnership, joint venture or agency will be created or deemed to be created by this Agreement or any action of the parties under this Agreement or under the Delegation Regulation.

21.03 The BCSA will not, during the Term, perform a service or provide advice to any individual, corporation, firm, association or other legal entity where such activity will, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of BCSA to the Province under this Agreement and the obligations of BCSA to such other individual, corporation, firm, association or other legal entity that prevents BCSA from fulfilling its obligations under this Agreement.

21.04 Any notice, document, statement, report, demand or payment desired or required to be given or made under this Agreement, must be in writing and may be given or made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed, if to the Province:

Ministry of Community, Aboriginal and Women's Services
Safety Policy and Liaison Branch
P.O. Box 9490, STN PROV GOVT
Victoria, British Columbia V8W 9N7

Attention: Kristina Stevens

and if to BCSA:

British Columbia Safety Authority
88 – 6th Street
New Westminster, British Columbia V3L 5B3

Attention: Harry Diemer, Chief Executive Officer

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

21.05 In addition to section 21.04, any notice, report, document, statement or demand transmitted by facsimile transmission from either party to the other will be conclusively deemed validly given to and received by the intended recipient when so transmitted to the following numbers:

If to the Province: (250) 387-6212

If to BCSA: (604) 660-6215

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

21.07 A reference in this Agreement:

- (a) to a statute whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof; and
- (b) to any other agreement between the parties means that other agreement as it may be amended from time to time by the parties.

21.08 Unless the context otherwise requires, any reference to "this Agreement" means this instrument and its schedules and any reference to any section or subsection by number is a reference to the appropriate section or subsection in this Agreement.

- 21.09 The headings or captions in this Agreement are inserted for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.
- 21.10 In this Agreement, "person" includes an individual, corporation, firm, association and any other legal entity where the context or the parties so require.
- 21.11 Each schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 21.12 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
- 21.13 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
- 21.14 This Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.
- 21.15 Neither party may assign this Agreement without the prior consent of the other party.
- 21.16 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 21.17 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.
- 21.18 Time is of the essence of this Agreement.
- 21.19 This Agreement is governed by and will be construed and interpreted in accordance with the laws of the Province of British Columbia.

- 21.20 For the purposes of sections 21.21 and 21.22, an “Event of Force Majeure” includes, but is not limited to, acts of God, changes in the laws of Canada, governmental restrictions or control on imports, exports or foreign exchange, wars (declared or undeclared), wildfires, floods, storms, strikes (including illegal work stoppages or slowdowns), freight embargoes and power failure or other cause beyond the reasonable control of a party, provided always that lack of money, financing or credit will not be and will not be deemed to be an “Event of Force Majeure”.
- 21.21 No party will be liable to another for any delay, interruption or failure in the performance of their respective obligations if caused by an Event of Force Majeure, in which case the time period for the performance or completion of any such obligation will be automatically extended for the duration of the Event of Force Majeure.
- 21.22 If an Event of Force Majeure occurs or is likely to occur, then the party directly affected will notify the other party forthwith, and will use its reasonable efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its obligations under this Agreement.
- 21.23 In this Agreement, words in the singular include the plural, and words in the plural include the singular, unless the context otherwise requires.

This Agreement has been executed by the parties as of the date first written above.

SIGNED on behalf of **Her Majesty**)
the Queen in Right of the Province)
of British Columbia by a duly)
authorized representative of the)
Minister of Community, Aboriginal)
and Women's Services in the)
presence of:)

L. Wamamaku)

(Witness)

Murray R. Coell

For the Minister of Community,
Aboriginal and Women's Services

SIGNED on behalf of **British**)
Columbia Safety Authority by a)
duly authorized signatory)
in the presence of:)

L. Wamamaku)

(Witness)

George L. Dorfitt

Authorized Signatory of British
Columbia Safety Authority

SCHEDULE "A"

Delegation Regulation

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

, Approved and Ordered

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the administration of the *Railway Safety Act*, except for sections 3, 11, 12 and 20 and Parts 4 and 5, is delegated to the British Columbia Safety Authority.

*Minister of Community, Aboriginal and
Women's Services*

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- *Railway Safety Act*, sections 6 and 22
Other (specify):-

March 30, 2004

2003/27

SCHEDULE "B"

Performance Objectives and Targets

Safety Outcome/Indicators	Performance Objective	Target
<p>To promote activities which will enhance public safety</p> <ul style="list-style-type: none"> • <i>risk trends by sector</i> • <i>statistical trend analysis</i> • <i>compliance with safety codes and standards</i> 	<p>Establish baseline statistical indicators for commuter and industrial rail safety, including</p> <ul style="list-style-type: none"> • Standardized data collection • Select indicators for each sector • Baseline data established for each sector <p>State of safety report to analyse trends in accidents, incidents and injuries in commuter and industrial rail operations.</p> <p>Reduce incidents of non-compliance with safety codes and standards</p>	<p>December 2004</p> <p>First report due for year ended December 2005</p> <p>Trends are maintained or improved over time.</p>

<p>To promote and encourage harmonization of technical safety standards and establish a leadership role for British Columbia in national railway safety forums</p> <ul style="list-style-type: none">• <i>New program delivery model</i>	<p>Successful transition to new safety regime for commuter and industrial rail.</p>	<p>April 2005</p>
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SCHEDULE "C"

Business Plan and Annual Report Requirements

BUSINESS PLAN REQUIREMENTS

The Business Plan of the BCSA shall include descriptions of the following:

- 1. Corporate Overview**
- 2. Vision, Mission, Values**
- 3. Planning Context and Key Strategic Issues**
- 4. Goals, Objectives, Strategies and Performance Measures**
- 5. Expenditure and Revenue Requirements**

ANNUAL REPORT REQUIREMENTS

The Annual Report of the BCSA shall include the following:

- 1. Message from the Chair**
- 2. CEO's Report**
- 3. Organization Overview**
- 4. Report on Performance**
- 5. Consolidated Financial Statements**
- 6. Names of Directors and Officers**
- 7. Statement of Corporate Governance Practices**

SCHEDULE "D"

Requirements for Custody and Maintenance of Provincial Records and New Records

- 1.01 Despite Article 10 of this Agreement, the *Document Disposal Act* and the *Freedom of Information and Protection of Privacy Act* will continue to apply to Provincial Records.
- 1.02 The BCSA will maintain New Records separately from the Transferred Records.
- 1.03 If any Provincial Record contains personal information (as that term is defined in the *Freedom of Information and Protection of Privacy Act*) the BCSA will use such information only:
 - (a) for the purpose for which it was obtained or compiled by or for the Province or for a use consistent with that purpose; and
 - (b) in accordance with Part 3 of the Act.
- 1.04 The BCSA will:
 - (a) not sell, destroy or otherwise dispose of Transferred Records or New Records without the prior written approval of the Province;
 - (b) return Transferred Records and transfer all New Records to the Province immediately upon receipt of the written instructions of the Province or upon termination of this Agreement;
 - (c) maintain the safe keeping and integrity of Transferred Records and New Records;
 - (d) permit the Province to have access to Transferred Records and New Records at all reasonable times;
 - (e) manage the Transferred Records in accordance with the recorded information management policies and procedures of the Province, as amended from time to time;

- (f) unless specifically exempted by the Province, manage the New Records in the same manner as if they are records of the Province to which will apply the recorded information management policies and procedures of the Province, as amended from time to time; and
 - (g) maintain a list of its personnel who are authorized to access Provincial Records that are not Transferred Records and provide the Province with a current copy of the list and all amendments to it from time to time.
- 1.05 The Province will provide the BCSA with reasonable access to the Provincial Records that are not Transferred Records as required by the BCSA to fulfill its obligations under this Agreement and its administration of the provisions of the Act specified in the Delegation Regulation.
- 1.06 Where possible, the Province will provide the BCSA with reasonable notice of any changes to policies or procedures referred to in section 1.04(e) and (f).
- 1.07 The BCSA will reimburse the Province for the storage costs of all Provincial Records within 30 days of receiving an invoice from the Province.