

PROVINCE OF BRITISH COLUMBIA
REGULATION OF THE MINISTER OF FINANCE

Financial Services Authority Act

Ministerial Order No. M303

I, Selina Robinson, Minister of Finance, order that the attached Transfer to the BC Financial Services Authority Regulation (No. 2) is made.

July 19, 2021

Date



Minister of Finance

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

Authority under which Order is made:

Act and section: *Financial Services Authority Act, S.B.C. 2019, c. 14, s. 25*

Other: _____

R10537843

TRANSFER TO THE BC FINANCIAL SERVICES AUTHORITY REGULATION (No. 2)

Definition

- 1** In this regulation, “**Appendix**” means an appendix to the attached agreement.

Transfer of property

- 2** Authority is given for the transfer to and vesting in the BC Financial Services Authority, by agreement, of the following tangible and intangible property, subject to the terms and conditions that apply to the transfer of that property under an agreement between the minister and the Authority that is substantially in the form of the attached agreement:
 - (a) the property listed or described in Appendix 1;
 - (b) the websites, electronic or digital systems and copyrights described in Appendix 3;
 - (c) the property listed or described in Appendix 4.

ASSET TRANSFER AGREEMENT

THIS AGREEMENT dated for reference as of August 1, 2021.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Finance (the "Province")

AND:

BC FINANCIAL SERVICES AUTHORITY, a corporation established under the *Financial Services Authority Act*, SBC 2019, c. 14 (the "Corporation")

WHEREAS:

- A. Further to the *Finance Statutes Amendment Act, 2021*, SBC 2021, c. 2 (the "Act"), the Superintendent of Real Estate will transfer from the Province to the Corporation by regulation of the Lieutenant Governor in Council pursuant to the Act, expected to occur on or around August 1, 2021;
- B. The Province has agreed to transfer, and the Corporation has agreed to acquire, certain assets and undertakings relating to the operations formerly carried on by the Superintendent of Real Estate; and
- C. The parties wish to transfer the Assets in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and the covenants, agreements, representations, warranties and payments hereinafter contained, the parties hereto covenant and agree as follows.

Article I

DEFINITIONS

1.01 In this Agreement and the Recitals:

"Agreement" means this asset transfer agreement inclusive of all appendices hereto;

"Assumed Contracts" means the agreements listed in Appendix 2;

"Assets" means

- (a) the chattels listed or described in Appendix 1,
- (b) the Assumed Contracts,
- (c) the website content, and electronic or digital systems, and associated copyrights described in Appendix 3, and
- (d) the other intangible property listed or described in Appendix 4;

"Closing" means the consummation of the transactions contemplated by this asset transfer agreement upon the Completion Date;

"Completion Date" means August 1, 2021 or such other date as the parties may agree upon in writing;

"Forgotten Assets" means any property that the Province determines, following the Completion Date, that it had intended to transfer to the Corporation as part of the Assets but which it omitted to do as a result of inadvertence;

"Minister" means the Minister of Finance; and

"Transfer Consideration" means the sum of \$1.00 and other good and valuable consideration.

Article II

TRANSFER OF ASSETS

2.01 Upon the terms and subject to the conditions of this Agreement, including payment of the Transfer Consideration, the Province agrees to assign and transfer the Assets to the Corporation, and the Corporation agrees to acquire the Assets from the Province.

2.02 The Province will assign to the Corporation, and the Corporation will assume all obligations of the Province under the Assumed Contracts, in each case to the extent permitted by law and by the terms of the Assumed Contracts.

2.03 The assignment and assumption referred to in section 2.02 will take effect upon Closing without the need for delivery of any further document or instrument.

Article III

PAYMENT OF THE TRANSFER CONSIDERATION

3.01 The Transfer Consideration will be paid by the Corporation to the Province on the Completion Date.

3.02 The Transfer Consideration will be subject to adjustments for such matters as are normally the subject of adjustments in transactions of this nature and all such adjustments will be

completed and all adjusting payments made by each party to the other on September 1, 2021, or such other date as mutually agreed to by the parties.

Article IV

TRANSFER OF ASSETS IDENTIFIED AFTER COMPLETION DATE

4.01 If, following the Completion Date, the Province identifies any Forgotten Assets, the Province will promptly give the Corporation a written notice setting out, in reasonable detail, a description of such Forgotten Assets and immediately upon the giving of such written notice all right, title and interest of the Province in such Forgotten Assets will vest in and be deemed to be transferred to the Corporation in the same manner, to the same extent and otherwise subject to the same provisions of this Agreement as would have applied had such Forgotten Assets been included as part of the Assets transferred upon Closing.

4.02 Notwithstanding section 4.01, the Corporation will be responsible for payment of any fees or costs associated with the registration, if applicable, of the transfer of any Forgotten Assets.

Article V

REPRESENTATIONS AND WARRANTIES AND COVENANTS OF THE PROVINCE

5.01 The Province represents and warrants to the Corporation as follows, with the intent that the Corporation will rely thereon in entering into this Agreement and in concluding the transfer and acquisition contemplated herein that:

- (a) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement, and the transfer of the Assets;
- (b) this Agreement has been legally and properly executed by the Province; and
- (c) the Province owns and possesses and has a good and marketable title to the Assets free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims whatsoever, except those described in this Agreement.

Article VI

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CORPORATION

6.01 The Corporation represents and warrants to the Province as follows, with the intent that the Province will rely thereon in entering into this Agreement, and in concluding the transfer and acquisition contemplated herein that effective now and on the Completion Date:

- (a) it has all the corporate power, capacity and authority to enter into this agreement and to carry out its obligations contemplated herein, all of which have been duly and validly authorized by all necessary corporate proceedings; and
- (b) the execution and delivery of this Agreement and the completion of the transaction contemplated hereby has been duly and validly authorized by all necessary corporate

action on the part of the Corporation, and this Agreement constitutes a legal, valid and binding obligation of the Corporation enforceable against the Corporation in accordance with its terms.

6.02 The Corporation acknowledges and agrees that it accepts the Assets in their current condition and location.

6.03 The Corporation will be liable for and will pay all applicable sales taxes, registration charges and transfer fees including without limitation, social services tax, tax under the *Excise Tax Act* (Canada) and property transfer tax, payable upon and in connection with the assignment and transfer of the Assets by the Province to the Corporation.

Article VII

DOCUMENTS TO BE DELIVERED

7.01 On the Completion Date the Province will deliver or cause to be delivered to the Corporation:

(a) a bill of sale in form appropriate to effectively vest in the Corporation a good and marketable title to the chattels described in Appendix 1.

7.02 On the Completion Date the Corporation will deliver or cause to be delivered to the Province:

(a) the Transfer Consideration; and

(b) such other documents as the Province's solicitors may reasonably require to give effect to the transactions described herein.

Article VIII

MISCELLANEOUS

8.01 Time of essence

Time will be of the essence of this Agreement.

8.02 Risk

The Assets will be at the risk of the Province up to 2:00 p.m. on the Completion Date.

8.03 Notices

Any notice, document or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered by hand addressed to the party to which it is to be given as follows:

To the Province:

Chief Financial Officer
Ministry of Finance
3rd Floor - 617 Government Street
Victoria, BC V8W 9V1

To the Corporation:

Chief Executive Officer
BC Financial Services Authority
600 – 750 West Pender Street
Vancouver, BC V6C 2T8

8.04 **Assignment**

The Corporation will not assign, either directly or indirectly, this Agreement or any of its rights under this Agreement without the prior written consent of the Province.

8.05 **Successors and assigns**

This Agreement will endure to the benefit of and be binding upon the parties and their respective successors and assigns.

8.06 **No merger**

The parties acknowledge and agree that the warranties, representations and agreements under sections 5.01, 6.01, and 6.02 will not be subject to merger but will survive the completion of the exchange of documents on the Completion Date.

Article IX

INTERPRETATION

9.01 **Statutes**

A reference to a statute in this Agreement 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.

9.02 **References**

Unless the context otherwise requires, any reference in this Agreement to any section or subsection by number is a reference to the appropriate section or subsection in this Agreement.

9.03 **Exercise of Power**

Wherever in this Agreement any option or discretion is conferred upon the Province or the Province is authorized or empowered to do, perform or consent to any act, matter or thing, such option or discretion may be exercised or such act, matter or thing may be done, performed or consented to on behalf of the Province by the Minister so to exercise such option or discretion or do, perform or consent to such act, matter or thing.

9.04 **Headings**

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.

9.05 Appendices

Each Appendix attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

9.06 Entire agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and there are no representations or warranties, express or implied, statutory or otherwise and no agreements collateral to this Agreement than as expressly set forth or referred to in this Agreement.

9.07 No other agreements

This Agreement supersedes and replaces any agreements or undertakings regarding the subject matter of this Agreement entered into, made or given by the parties prior to the date this Agreement comes into force and effect.

9.08 Further acts and assurances

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.

9.09 Severability

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.

9.10 Amendments in writing

This Agreement may not be amended except by agreement in writing between the parties.

9.11 Currency

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

9.12 No waiver

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.

9.13 Governing law

This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

9.14 Counterparts

This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by fax or any other form of electronic transmission.

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Per:  _____
Authorized Signatory
Minister of Finance

BC FINANCIAL SERVICES AUTHORITY

Per: _____
Authorized Signatory
Blair Morrison, CEO

Appendix 1

The chattels are as follows:

1. Technology equipment including monitors, mobile devices and peripherals that are in the possession of the Superintendent of Real Estate as of the day prior to the Completion Date.

Appendix 2

1. ASSUMED CONTRACTS

Party	Contract Type/Description	Signed Date
ICBC	Information Sharing Agreement	November 1, 2018

Appendix 3

The websites and electronic or digital systems are as follows:

1. Any and all computer software, source code and object code relating to databases, websites, systems and associated copyrights used specifically for the Regulatory Programs (as defined in Appendix 4), where such rights reside with the Province as of the Completion Date.

Appendix 4

The intangible property is as follows:

1. All information contained within databases used for the delivery of the operations of the Superintendent of Real Estate (collectively the “Regulatory Programs”) including consumer databases, contact information databases and digital asset management databases.
2. All licences, leases or permits related to the delivery of the Regulatory Programs that currently reside with or are owned by the Province, including those stored in consumer, contact information, and digital asset management databases.
3. Any and all other intellectual property used in the delivery of the Regulatory Programs, including trade secrets, know-how, training and education curricula, workshops and industry programs.
4. All and any other material used for the delivery of the Regulatory Programs, including but not limited to, records, strategies, plans, presentations, videos, footage, still photographs, illustrations, data, analyses, reports, research studies and reports.
5. The balance of the following accounts as of the Completion Date:

Account	Account Number	Description
Royal Bank of Canada	1297225	Revenue
Provincial Treasury: OSRE deferred revenue	N/A	Deferred revenue