

**SCHEDULE 14  
LENDERS' REMEDIES AGREEMENT**

**LENDERS' REMEDIES AGREEMENT**

**AMONG**

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

**- and -**

**BC TRANSPORTATION FINANCING AUTHORITY**

**- and -**

**[AGENT]**

**- and -**

**[PROJECT CO]**

**•, 201•**

**TABLE OF CONTENTS**

<b>PART 1 DEFINITIONS AND INTERPRETATION .....</b>	<b>2</b>
1.1 Definitions .....	2
1.2 Interpretation.....	7
1.3 Governing Law .....	8
1.4 Submission to Jurisdiction.....	8
1.5 Agent for Service .....	8
1.6 No Fettering of Province's Rights, Powers and Authority .....	8
1.7 Language.....	8
<b>PART 2 CONSENT TO SECURITY; ACKNOWLEDGEMENTS.....</b>	<b>9</b>
2.1 Consent .....	9
2.2 No Notice of Other Security .....	9
2.3 Province Obligations.....	9
2.4 Province's Rights not Prejudiced.....	9
2.5 Agreements and Collateral Documents .....	9
2.6 Assignment of Collateral Documents and Project Documents .....	10
2.7 Notification regarding Additional Permitted Borrowing .....	10
2.8 Acknowledgement of Province Ownership of Project Infrastructure .....	10
<b>PART 3 NOTICES.....</b>	<b>11</b>
3.1 Termination Notice .....	11
3.2 Notice of Event of Default and Indicative Notice.....	11
3.3 Agent's No Step-In Notice.....	12
3.4 Notice of Antecedent Liabilities .....	12
3.5 Subsequent Province Notice of Liabilities.....	12
3.6 No Right to Terminate .....	13
3.7 Revocation of Termination Notice.....	13
3.8 Notice of Exercise of Other Remedies.....	13
3.9 Notice of Enforcement or Intention to Enforce by Agent.....	13
<b>PART 4 STEP-IN.....</b>	<b>13</b>
4.1 Step-In Notice .....	13
4.2 Contents of Step-In Notice.....	13
4.3 Appointed Representative Rights .....	14
4.4 Limitation on Antecedent Liabilities .....	14
4.5 Province Approval of Proposed Appointed Representative .....	14
4.6 Province Objection to Proposed Appointed Representative .....	14
4.7 One Step-In Period.....	15
4.8 Termination of Project Agreement during Step-In Period.....	15
<b>PART 5 STEP-OUT.....</b>	<b>16</b>
5.1 Step-Out Notice .....	16
5.2 Expiry of Step-In Period.....	16
5.3 Project Co Remains Bound.....	17
<b>PART 6 SENIOR LENDER REPLACEMENT OF PROJECT CO.....</b>	<b>17</b>
6.1 Project Co Transfer Notice .....	17
6.2 Province Consent .....	17
6.3 Withholding of Consent.....	17

6.4	Terms of Transfer .....	17
<b>PART 7 INSURANCE.....</b>		<b>18</b>
7.1	Release of Insurance Proceeds.....	18
<b>PART 8 COVENANTS, REPRESENTATIONS AND WARRANTIES .....</b>		<b>18</b>
8.1	Province Covenants .....	18
8.2	Agent Covenants.....	19
8.3	Representations and Warranties of the Province and BCTFA.....	19
<b>PART 9 TERM.....</b>		<b>20</b>
9.1	Term.....	20
9.2	Agent to Notify Province .....	20
<b>PART 10 STEP-IN RIGHTS UNDER COLLATERAL AGREEMENTS .....</b>		<b>20</b>
10.1	Priority of Step-In Rights under Principal Contracts .....	20
10.2	Step-in from Termination Date .....	21
10.3	Release of Security .....	21
10.4	Retention of Security for Deficiency .....	21
10.5	No Enforcement Action .....	22
10.6	Assignment of Principal Contracts by Secured Parties.....	22
<b>PART 11 ASSIGNMENT.....</b>		<b>22</b>
11.1	Restriction on Assignment.....	22
11.2	Assignment by Agent.....	22
11.3	Assignment by Province .....	23
11.4	Assignment by Project Co .....	23
<b>PART 12 MISCELLANEOUS.....</b>		<b>23</b>
12.1	<i>Financial Administration Act</i> .....	23
12.2	Province Rights of Termination.....	23
12.3	Rights of Agent Preserved .....	24
12.4	Agent's Designation of Designated Account.....	24
<b>PART 13 GENERAL PROVISIONS .....</b>		<b>24</b>
13.1	[Not Used].....	24
13.2	Project Co Covenant .....	24
13.3	Conflict or Inconsistency .....	25
13.4	Dispute Resolution Procedure under Project Agreement .....	25
13.5	Amendments .....	25
13.6	Notices .....	25
13.7	Waiver.....	27
13.8	Further Assurances .....	27
13.9	Relationship of the Parties .....	27
13.10	Binding Effect.....	27
13.11	Counterparts.....	28
13.12	Remedies Cumulative .....	28
13.13	Joint and Several.....	28

**LENDERS' REMEDIES AGREEMENT**

THIS AGREEMENT is dated as of •, 20•

**AMONG:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA**, as represented by the **MINISTER OF  
TRANSPORTATION AND INFRASTRUCTURE**

(the "Province")

**AND:**

**BC TRANSPORTATION FINANCING AUTHORITY**, a corporation  
continued under the *Transportation Act* (British Columbia)

("BCTFA")

**AND:**

[AGENT]

as administrative agent and collateral agent for the Senior Lenders (the "Agent")

**AND:**

[PROJECT CO]

("Project Co")

**WHEREAS:**

- A. The Province, BCTFA and Project Co have entered into the Project Agreement;
- B. Pursuant to the Credit Agreement, the Lenders have agreed, subject to the terms and conditions contained therein, to make available to Project Co the loan facility or facilities specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project Agreement; and
- C. It is a requirement under the Project Agreement and a condition precedent to the first drawdown of Senior Debt by Project Co under the Credit Agreement that this Agreement be executed and delivered by the parties.

**NOW THEREFORE** in consideration of the covenants and agreements of the parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto covenant and agree as follows:

**PART 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Unless otherwise specified or the context otherwise requires:

- (a) “**Agent’s No Step-In Notice**” has the meaning set out in Section 3.3 [Agent’s No Step-In Notice] of this Agreement;
- (b) “**Agreement**” means this agreement, including any recitals to this agreement, as amended, supplemented or restated from time to time;
- (c) “**Agreed Antecedent Liabilities**” means the Antecedent Liabilities identified in the Liability Report most recently delivered to the Agent pursuant to Section 3.4 [Notice of Antecedent Liabilities] of this Agreement and any additional Material Antecedent Liabilities notified to the Agent pursuant to Section 3.5 [Subsequent Province Notice of Liabilities] of this Agreement;
- (d) “**Antecedent Liabilities**” means, as at any time:
  - (i) all amounts due and payable by Project Co to the Province under the Project Agreement at such time; and
  - (ii) to the extent not falling within the scope of paragraph (i), all obligations of Project Co under the Project Agreement that should have been, but have not been, performed, and all outstanding liabilities of Project Co under the Project Agreement, in each case at such time;
- (e) “**Appointed Representative**” means the Representative identified in a Step-In Notice;
- (f) “**Collateral Agent**” has the meaning set out in the Credit Agreement; [NTD: **Modify, as necessary, to reflect the term used in the Credit Agreement.**]
- (g) “**Collateral Documents**” has the meaning set out in the Credit Agreement; [NTD: **Modify, as necessary, to reflect the term used in the Credit Agreement.**]
- (h) “**Credit Agreement**” means the credit agreement of even date herewith among Project Co, the Lenders and the Agent, as such agreement may be amended, supplemented or replaced from time to time as may be permitted by the Project Agreement;
- (i) “**Deficiency**” has the meaning set out in Section 10.4(b) of this Agreement;
- (j) “**Designated Account**” has the meaning set out in Section 12.4 [Agent’s Designation of Designated Account] of this Agreement;
- (k) “**Enforcement Action**” means:

- (i) any acceleration of amounts due and owing under any of the Senior Lending Agreements;
  - (ii) any enforcement of Security by the Collateral Agent; or
  - (iii) the exercise by the Agent of any right under Part 4 [Step-In] or Part 6 [Senior Lender Replacement of Project Co] of this Agreement;
- (l) **“Event of Default”** has the meaning set out in the Credit Agreement; [NTD: **Modify, as necessary, to reflect the term used in the Credit Agreement.**]
- (m) **“Guarantee”** has the meaning, in respect of any Principal Contract, given in Section 1.1 [Definitions] of the Collateral Agreement relating to such Principal Contract.
- (n) **“Indicative Notice”** means either an Indicative Step-In Notice or an Indicative Transfer Notice;
- (o) **“Indicative Notice Period”** means:
- (i) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
    - (A) the Step-In Date;
    - (B) the date of delivery of an Agent’s No Step-In Notice; and
    - (C) the date that is 120 days after the date of delivery of such Indicative Step-In Notice; and
  - (ii) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
    - (A) the Transfer Date; and
    - (B) the date that is 120 days after the date of delivery of such Indicative Transfer Notice;
- (p) **“Indicative Step-In Notice”** has the meaning set out in Section 3.2 [Notice of Event of Default and Indicative Notice] of this Agreement;
- (q) **“Indicative Transfer Notice”** has the meaning set out in Section 3.2 [Notice of Event of Default and Indicative Notice] of this Agreement;
- (r) **“Insolvency Law”** means any of the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada) and any other applicable bankruptcy, insolvency, moratorium,

reorganization or other similar law of any jurisdiction, including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it;

- (s) **“Insolvency Officer”** means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or any of its assets;
- (t) **“Insolvency Proceedings”** means:
  - (i) any
    - (A) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering,
    - (B) appointment of an Insolvency Officer in connection with,
    - (C) order or resolution passed to commence or effect, as applicable, or
    - (D) formal agreement reached regarding,

in the case of any of (A) to (D), a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganisation, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co (whether voluntary or involuntary) made or commenced by any party under any Insolvency Law; or
  - (ii) a distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or any other similar process or event occurring in relation to Project Co’s assets in any other jurisdiction;
- (u) **“Lenders”** has the meaning set out in the Credit Agreement;
- (v) **“Lenders’ Step-In Notice”** has the meaning set out in Section 10.1 [Priority of Step-In Rights under Principal Contracts] of this Agreement;
- (w) **“Liability Report”** has the meaning set out in Section 3.4 [Notice of Antecedent Liabilities] of this Agreement;
- (x) **“Material Antecedent Liabilities”** means Antecedent Liabilities that are:
  - (i) financial liabilities;
  - (ii) non-financial liabilities to the extent that failure to perform the relevant obligation or satisfy the relevant liability will result in any right or remedy becoming exercisable by the Province under Section 9.1 [Indemnification by

Project Co] or Section 12.3 [Remedies of the Province for Project Co Default] of the Project Agreement;

- (y) **“Performance Securities”** has the meaning, in respect of any Principal Contract, given in Section 1.1 [Definitions] of the Collateral Agreement relating to such Principal Contract.
- (z) **“Project Agreement”** means the agreement titled “Project Agreement” of even date herewith and made among the Province, BCTFA and Project Co, as amended, supplemented or replaced from time to time;
- (aa) **“Representative”** means:
  - (i) the Agent (in either or both of its capacities, including as Collateral Agent), any Senior Lender or any of their Affiliates (provided that such person is not a Restricted Person and none of its Affiliates is a Restricted Person for any reason other than by reason of subsection (d) of the definition of “Restricted Person” in Section 1.1 [Definitions] of Schedule 1 to the Project Agreement);
  - (ii) a person that is under the Control of the Senior Lenders (provided that such person is not a Restricted Person and none of its Affiliates is a Restricted Person for any reason other than by reason of subsection (d) of the definition of “Restricted Person” in Section 1.1 [Definitions] of Schedule 1 to the Project Agreement);
  - (iii) an administrative receiver, receiver or receiver and manager of Project Co appointed under or in connection with the Collateral Documents; or
  - (iv) any other person approved by the Province in writing (such approval not to be unreasonably withheld or delayed);
- (bb) **“Revocation of Termination Notice”** has the meaning set out in Section 3.7 [Revocation of Termination Notice] of this Agreement;
- (cc) **“Secured Parties”** has the meaning set out in the Credit Agreement;
- (dd) **“Security”** means the security interests granted in favour of the Collateral Agent, for and on behalf of, and for the benefit of, the Secured Parties pursuant to the Collateral Documents;
- (ee) **“Senior Debt Discharge Date”** means the date on which the Agent notifies the Province that all amounts due and owing to the Secured Parties under the Senior Lending Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders are under no further obligation to advance any monies under the relevant Senior Lending Agreements;
- (ff) **“Step-In Date”** means 1 Business Day after the earlier of:



- (i) the day the Province notifies the Agent, in accordance with Section 4.5(a) of this Agreement, that the Province accepts the proposed Appointed Representative; and
  - (ii) expiry of the period of 10 Business Days after the Agent delivers a Step-In Notice, if the Province has failed to notify the Agent in accordance with Section 4.5 [Province Approval of Proposed Appointed Representative] of this Agreement;
- (gg) “**Step-In Notice**” means a notice given by the Agent to the Province pursuant to Section 4.1 [Step-In Notice] of this Agreement;
- (hh) “**Step-In Period**” means the period from the Step-In Date up to and including the earliest of:
- (i) the Step-Out Date;
  - (ii) the date on which this Agreement ceases to have effect in accordance with Section 9.1 [Term] of this Agreement;
  - (iii) the date of any termination of the Project Agreement under Section 4.8 [Termination of Project Agreement during Step-In Period] of this Agreement; and
  - (iv) the end of the Term;
- (ii) “**Step-Out Date**” means the date that is 20 Business Days after delivery of a Step-Out Notice;
- (jj) “**Step-Out Notice**” means a notice from the Agent or the Appointed Representative to the Province pursuant to Section 5.1 [Step-Out Notice] of this Agreement;
- (kk) “**Suitable Substitute Project Co**” means a person:
- (i) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement and any other Project Document; and
  - (ii) having the technical competence, experience and financial standing, and the technical and financial resources (including employees with appropriate qualifications, experience and technical competence, committed financial resources and contracts) sufficient to enable it to perform the obligations of Project Co under the Project Agreement and any other Project Document,
- provided that such person is not:
- (iii) a Restricted Person; or

- (iv) a person any of whose Affiliates is a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1 to the Project Agreement;
- (ll) “**Termination Notice**” means a notice given by the Province to the Agent under Section 3.1 [Termination Notice] of this Agreement;
- (mm) “**Termination Notice Period**” means the period beginning on the date of service of a Termination Notice and ending on the earliest of:
  - (i) the Step-In Date;
  - (ii) the date of delivery of a Revocation of Termination Notice; and
  - (iii) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a) of this Agreement) set out in the Termination Notice;
- (nn) “**Termination Payment**” has the meaning set out in Section 10.4(b) of this Agreement;
- (oo) “**Transfer Date**” has the meaning set out in Section 6.4 [Terms of Transfer] of this Agreement; and
- (pp) other words and expressions with initial capital letters used in this Agreement which are defined in the Project Agreement have the same meanings when used in this Agreement as are given to them in the Project Agreement; provided that, if such meanings have been amended since the date hereof, the meanings as at the date hereof shall apply when used herein unless and to the extent that the Agent has already approved the amendment of such meanings in the Project Agreement pursuant to the terms of the Senior Lending Agreements (in which case such amended meanings shall also apply to this Agreement) or has otherwise agreed to such amended meanings so applying to this Agreement.

## **1.2 Interpretation**

Save to the extent that the context or the express provisions of this Agreement otherwise require, this Agreement shall be interpreted according to the provisions set out in Part 2 [Interpretation] of Schedule 1 to the Project Agreement, *mutatis mutandis*; provided that, if such provisions have been amended since the date hereof, the provisions as at the date hereof shall apply when used herein unless and to the extent that the Agent has already approved the amendment of such provisions in the Project Agreement pursuant to the terms of the Senior Lending Agreements (in which case such amended provisions shall also apply to this Agreement) or has otherwise agreed to such amended provisions so applying to this Agreement.

In addition, unless the context otherwise requires, references herein to the “**Agent**” shall be construed as references to the Agent (or any successor Agent) acting in its capacities as administrative agent and collateral agent on behalf, for the benefit and upon the instructions of the Senior Lenders.

### **1.3 Governing Law**

This Agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia, and the laws of British Columbia and the laws of Canada applicable in British Columbia are the proper law of this Agreement.

### **1.4 Submission to Jurisdiction**

Subject to Section 13.4 [Dispute Resolution Procedure under Project Agreement] of this Agreement, the parties hereby irrevocably submit to the exclusive jurisdiction of the Court in any action or proceeding arising out of or relating to this Agreement, or any Collateral Document, and hereby agree that the Court has exclusive jurisdiction to entertain and determine all claims in respect of any such action or proceeding.

### **1.5 Agent for Service**

The Agent hereby appoints • of •, [insert address] as its authorized agent for the purpose of accepting service of process for all purposes in connection with this Agreement.

### **1.6 No Fettering of Province's Rights, Powers and Authority**

- (a) Nothing in this Agreement fetters or otherwise interferes with or limits, or shall be construed to fetter or otherwise interfere with or limit, the rights, powers and authority of the Province or BCTFA or of any minister (including the Minister), ministry (including the Ministry) or agency, board, commission, corporation or other entity of the Province, including with respect to the development or application of government policy and including any right, power or authority to:
  - (i) enact, amend, repeal or replace any enactment or regulation made under any enactment;
  - (ii) exercise or refrain from exercising any discretion conferred under Laws; or
  - (iii) administer, apply and enforce Laws;
- (b) Without prejudice to the provisions of the Project Agreement, neither the Agent nor the Senior Lenders shall be entitled to claim or receive any compensation or other relief whatsoever as a result of anything described in any of Sections 1.6(a)(i) to (iii) inclusive of this Agreement.

### **1.7 Language**

The language of this Agreement is English. All communications, documents and information provided pursuant to this Agreement must be entirely in English.

**PART 2  
CONSENT TO SECURITY; ACKNOWLEDGEMENTS**

**2.1 Consent**

The Province acknowledges notice of, and (without prejudice and subject to Section 2.4 [Province's Rights not Prejudiced] of this Agreement) consents to, the security interests granted in favour of the Secured Parties under the Collateral Documents over Project Co's rights under the Project Agreement, the policies of insurance relating to the Required Insurance and all other Project Documents.

**2.2 No Notice of Other Security**

The Province confirms that it has not received written notice of any other security interest, other than the Security, granted over Project Co's rights under the Project Agreement and any other Project Documents, or over proceeds payable under the insurance to be taken out by Project Co pursuant to the Project Agreement.

**2.3 Province Obligations**

Except as specifically provided in this Agreement or arising under applicable Laws, the Province has no obligations (whether express, implied, collateral or otherwise) to any of the Secured Parties in connection with this Agreement, the Project Agreement or any other Project Document or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Province under this Agreement are given solely to the Agent on behalf of the Senior Lenders and (except as expressly provided herein) do not confer any rights on or in favour of Project Co or any Affiliate of Project Co or any other person.

**2.4 Province's Rights not Prejudiced**

The parties acknowledge that nothing in the Senior Lending Agreements, this Agreement or any other agreement between any of them (including any service by the Agent of a notice hereunder) shall, except as expressly set out in this Agreement, affect the rights of the Province under the Project Agreement (but an exercise by the Province of those rights shall not preclude a proper exercise by the Agent of its rights under this Agreement or, subject to the terms of this Agreement, the Senior Lending Agreements).

**2.5 Agreements and Collateral Documents**

- (a) Project Co, the Agent and the Senior Lenders shall not amend or modify the Senior Lending Agreements, or any of them, or enter into any new Senior Lending Agreements except where Project Co is permitted to do so pursuant to and in accordance with the terms of the Project Agreement.
- (b) The Agent acknowledges having received a copy of the Project Agreement and a copy of the Collateral Agreements.
- (c) The Province acknowledges having received as at the date of this Agreement copies of the Initial Senior Lending Agreements.

- (d) The Agent confirms to the Province that the copies of the Senior Lending Agreements provided to the Province for acknowledgement under Section 2.5(c) of this Agreement constitute all of the Initial Senior Lending Agreements.

## **2.6 Assignment of Collateral Documents and Project Documents**

Except for a transfer to a successor Agent to whom the rights and obligations of the Agent under this Agreement have been assigned or transferred in accordance with Section 11.2 [Assignment by Agent] of this Agreement, the Agent shall not exercise any right it may have pursuant to the Collateral Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Collateral Documents in respect of the Project Agreement or any of the other Project Documents, without the prior written consent of the Province's Representative pursuant to the Project Agreement, provided that this Section 2.6 shall not apply to any exercise by the Agent (in either or both of its capacities, including as Collateral Agent) of its rights or remedies under the Credit Agreement and the Collateral Documents upon an Event of Default.

## **2.7 Notification regarding Additional Permitted Borrowing**

- (a) Each of Project Co and the Agent shall promptly notify the Province's Representative of the details and amount of any proposed Additional Permitted Borrowing including:
  - (i) the circumstances giving rise to the proposed Additional Permitted Borrowing and the reasons for the proposed Additional Permitted Borrowing; and
  - (ii) the terms on which the proposed Additional Permitted Borrowing shall be borrowed.
- (b) On the first Business Day of each calendar month, Project Co shall notify the Province's Representative of:
  - (i) the aggregate amount of Senior Debt outstanding under the Senior Lending Agreements;
  - (ii) the aggregate amount of the Additional Permitted Borrowing outstanding (if any);
  - (iii) the amount of any Distribution made by Project Co since the date any such Additional Permitted Borrowing was first made; and
  - (iv) the amount of any credit balance on all accounts of Project Co maintained by Project Co pursuant to the Senior Lending Agreements as at the last day of the immediately preceding calendar month.

## **2.8 Acknowledgement of Province Ownership of Project Infrastructure**

The Agent acknowledges, as contemplated in, and subject to the exceptions set out in, Section 2.10 [Title to Infrastructure and Improvements] and Section 2.12 [Transfer of Title] of the Project Agreement, that title to and ownership of the Project Infrastructure, all Plant, all other improvements on

or to the Project Site from time to time and all rights (including Intellectual Property Rights) in and to the Records, any Province Provided Materials and any Modifications to Province Provided Materials are vested or will vest in the Province or BCTFA or such other person as provided for in such Sections of the Project Agreement, as applicable, and the Agent (on behalf of itself, including as Collateral Agent, and the Senior Lenders) hereby disclaims and releases any security or other property interest in or title to any such Project Infrastructure, Plant, improvements and rights.

**PART 3  
NOTICES**

**3.1 Termination Notice**

Except in the circumstances in which the Province is entitled, pursuant to Section 12.3(a) of the Project Agreement as a result of any Project Co Default referred to in Section 12.1 (i) or (j) of the Project Agreement or pursuant to Section 12.3(b) of the Project Agreement, to terminate the Project Agreement by notice having immediate effect (in which case, Section 12.2(a) of this Agreement shall apply), the Province shall not terminate or deliver any notice terminating the Project Agreement in respect of or as a result of the occurrence of a Project Co Default without giving to the Agent written notice (a “**Termination Notice**”) stating:

- (a) that a Project Co Default has occurred and the proposed Termination Date, which shall be not sooner than 90 days after the date of delivery of the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

**3.2 Notice of Event of Default and Indicative Notice**

The Agent agrees that:

- (a) concurrently with delivery by it to Project Co of any notice of an Event of Default, it shall provide a copy of such notice to the Province’s Representative, together with reasonable details of such Event of Default; and
- (b) without prejudice to the Collateral Agent’s rights in its capacity as collateral agent under the Collateral Documents, at any time during:
  - (i) the continuance of an Event of Default; or
  - (ii) the Termination Notice Period;

if it intends either to nominate a Representative to step-in in accordance with Section 4.1 [Step-In Notice] of this Agreement or effect a transfer in accordance with Section 6.1 [Project Co Transfer Notice] of this Agreement, it shall give to the Province’s Representative a notice to such effect (respectively, an “**Indicative Step-In Notice**” or an “**Indicative Transfer Notice**”).

### **3.3 Agent's No Step-In Notice**

If, at any time after the giving of an Indicative Notice or receipt of a Termination Notice, the Agent has determined that it is not, or is no longer, considering appointing a Representative to step-in in accordance with Section 4.1 [Step-In Notice] of this Agreement or effecting a transfer in accordance with Section 6.1 [Project Co Transfer Notice] of this Agreement, as the case may be, the Agent shall give notice to such effect (an "**Agent's No Step-In Notice**") to the Province's Representative and thereupon the provisions of Part 4 [Step-In], Part 5 [Step-Out] and Part 6 [Senior Lender Replacement of Project Co] of this Agreement shall not be applicable with respect to the event that led to delivery of such Indicative Notice or Termination Notice, as the case may be, and the Province shall be at liberty to take any and all action available to it under the Project Agreement and any other Province Project Documents.

### **3.4 Notice of Antecedent Liabilities**

Unless the Agent has delivered an Agent's No Step-In Notice, then not later than 30 days after the earlier of:

- (a) the date of delivery by the Province of a Termination Notice; or
- (b) the date of delivery by the Agent of an Indicative Notice;

the Province shall give the Agent a notice (the "**Liability Report**") containing details of:

- (c) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (d) any financial liabilities of Project Co of which the Province is aware (after reasonable enquiry) that will fall due under the Project Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
  - (i) in the case of a Termination Notice, the proposed Termination Date set out in such notice; and
  - (ii) in the case of an Indicative Notice, the date referred to in paragraph (i)(C) or paragraph (ii)(B), as applicable, of the definition of "Indicative Notice Period".

If the Agent disputes any amount, statement or other information set out in a Liability Report given by the Province, the Agent may refer such dispute for resolution in accordance with the Dispute Resolution Procedure. Despite any such referral to the Dispute Resolution Procedure, there shall be no extension of the Termination Notice Period or Indicative Notice Period, as the case may be, on account of such referral.

### **3.5 Subsequent Province Notice of Liabilities**

After the delivery of the Liability Report, and provided that the Agent has not subsequently delivered an Agent's No Step-In Notice, the Province's Representative shall, promptly upon the Province becoming aware of them, notify the Agent in writing of any additional Material Antecedent Liabilities

arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

### **3.6 No Right to Terminate**

The Province shall not terminate or deliver any notice terminating the Project Agreement during any Termination Notice Period (excluding the proposed Termination Date) or any Indicative Notice Period.

### **3.7 Revocation of Termination Notice**

A Termination Notice can be revoked by notice to the Agent (a “**Revocation of Termination Notice**”) by the Province’s Representative given prior to the earlier of: (a) the Step-In Date; and (b) the proposed Termination Date set out in the Termination Notice. Upon any such revocation, the rights and obligations of the parties shall be construed as if the relevant Termination Notice had not been given.

### **3.8 Notice of Exercise of Other Remedies**

The Province shall notify the Agent, concurrently with its notifying Project Co, of any notice given by or on behalf of the Province to Project Co under Section 11.5(a)(iv), Part 12 [Project Co Default and Province Remedies] or Section 14.5(a) of the Project Agreement. The Province shall provide to the Agent a copy of any notice given by Project Co under Section 12.2 [Notice of Default by Project Co] of the Project Agreement, promptly upon receipt thereof.

### **3.9 Notice of Enforcement or Intention to Enforce by Agent**

The Agent shall give notice to the Province’s Representative promptly after a determination is made by the Senior Lenders to take any Enforcement Action, specifying in reasonable detail particulars of the Enforcement Action in respect of which the determination is made. Such notice shall be given a reasonable time (having regard to all the relevant circumstances and the nature of the action proposed to be taken) before the Enforcement Action is taken in respect of the Project Agreement or any of the Project Documents.

## **PART 4 STEP-IN**

### **4.1 Step-In Notice**

Subject to Section 4.7 [One Step-In Period] of this Agreement and without prejudice to the rights of the Secured Parties under the Senior Lending Agreements, the Agent may give the Province’s Representative a notice (a “**Step-In Notice**”) at any time during an Indicative Notice Period.

### **4.2 Contents of Step-In Notice**

In the Step-In Notice, the Agent shall:

- (a) state that it intends to exercise its step-in rights under this Agreement;



- (b) identify the proposed Appointed Representative; and
- (c) enclose the Appointed Representative's proposed remedial program.

#### **4.3 Appointed Representative Rights**

Subject to Section 4.6 [Province Objection to Proposed Appointed Representative] of this Agreement, on the Step-In Date, the Appointed Representative shall assume jointly and severally with Project Co the rights of Project Co under the Project Agreement and any other Province Project Document (other than this Agreement), which rights are conditional on and may be exercised subject to performance of the obligations of Project Co under the Project Agreement and any other Province Project Document (other than this Agreement), as applicable. During the Step-In Period, the Province shall deal with the Appointed Representative and not Project Co.

#### **4.4 Limitation on Antecedent Liabilities**

No Appointed Representative shall be liable to the Province or Project Co for any Antecedent Liabilities (whether or not known at the time of preparation of the Liability Report most recently delivered to the Agent pursuant to Section 3.4 [Notice of Antecedent Liabilities] of this Agreement or of any notice of additional Material Antecedent Liabilities given by the Province under Section 3.5 [Subsequent Province Notice of Liabilities] of this Agreement) other than the Agreed Antecedent Liabilities notified by the Province to the Agent prior to the Step-In Date.

#### **4.5 Province Approval of Proposed Appointed Representative**

By no later than 10 Business Days after the Agent delivers a Step-In Notice, the Province shall either:

- (a) notify the Agent that the Province accepts the proposed Appointed Representative; or
- (b) notify the Agent, in accordance with Section 4.6 [Province Objection to Proposed Appointed Representative] of this Agreement, that the Province objects to the proposed Appointed Representative.

If the Province fails to so notify the Agent before expiry of such 10 Business Day period, the Province shall thereupon immediately be deemed to have accepted the proposed Appointed Representative.

#### **4.6 Province Objection to Proposed Appointed Representative**

The Step-In Period shall not commence if the Province, acting reasonably, considers that (and so notifies the Agent no later than 10 Business Days after the Agent delivers a Step-In Notice):

- (a) the proposed Appointed Representative does not have the legal capacity, power and authority to perform the obligations of Project Co under the Project Agreement and any other Province Project Document (other than this Agreement); or
- (b) the technical competence or the technical resources either directly or indirectly available to the proposed Appointed Representative are insufficient to enable it to perform the

obligations of Project Co under the Project Agreement and any other Province Project Document (other than this Agreement);

- (c) the financial resources available either directly or indirectly to the proposed Appointed Representative are insufficient to meet its immediate working capital requirements, the financing it requires on a month by month basis and to enable it to perform the obligations of Project Co under the Project Agreement and any other Province Project Document (other than this Agreement); or
- (d) the Appointed Representative is a Restricted Person, or any of its Affiliates is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of "Restricted Person" in Section 1.1 [Definitions] of Schedule 1 to the Project Agreement, and continues to be an Appointed Representative within the definition thereof.

If the Province gives notice to the Agent as provided in this Section 4.6 then, provided the Indicative Notice Period has not expired in accordance with paragraph (i)(C) or paragraph (ii)(B), as applicable, of the definition of "Indicative Notice Period", the Agent may issue a new Step-In Notice including details of a new proposed Appointed Representative.

#### **4.7 One Step-In Period**

The Agent may give only one Step-In Notice following delivery of any one Indicative Notice, unless the Agent is permitted pursuant to Section 4.6 [Province Objection to Proposed Appointed Representative] of this Agreement to issue a new Step-In Notice.

#### **4.8 Termination of Project Agreement during Step-In Period**

The Province shall not terminate the Project Agreement in whole or in part during the Step-In Period except as permitted in accordance with this Section 4.8. The Province shall be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Agent and the Appointed Representative:

- (a) if any of the Agreed Antecedent Liabilities that are financial liabilities have not been paid to the Province on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid to the Province by the due date;
- (b) if amounts, of which the Province was not aware (having made reasonable enquiry) at the time of the Liability Report most recently delivered to the Agent pursuant to Section 3.4 [Notice of Antecedent Liabilities] of this Agreement or in respect of which the Province has not subsequently notified the Agent pursuant to Section 3.5 [Subsequent Province Notice of Liabilities] of this Agreement, subsequently become due and payable by Project Co and are not discharged by:
  - (i) if notice of such liability is given to the Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date; and

- (ii) if notice of the liability is given to the Agent within 20 Business Days prior to the Step-In Date and such liability is material (as stated by the Province, acting reasonably, when it gives such notice or by the Agent, acting reasonably, by notice to the Province within 5 Business Days after receipt of the notice from the Province), 20 Business Days after the Step-In Date or, if the due date for payment is later, the due date; or
- (iii) otherwise, 20 Business Days after delivery of the notice of such liability to the Agent or, if the due date for payment is later, the due date;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement and this Agreement (other than a Project Co Insolvency Event), provided that, for the purposes of termination under the Project Agreement, any Default Points that arose prior to the Step-In Date shall not be taken into account during the Step-In Period (but shall be taken into account after the Step-Out Date);
- (d) on grounds arising prior to the Step-In Date in accordance with the terms of the Project Agreement and this Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy any Antecedent Liabilities falling within the scope of paragraph (ii) of the definition thereof that are continuing and remain unremedied after the Step-In Date; or
- (e) if the Substantial Completion Date does not occur on or before the date that is 12 months after the Substantial Completion Longstop Date.

## **PART 5 STEP-OUT**

### **5.1 Step-Out Notice**

The Appointed Representative or the Agent may at any time during the Step-In Period deliver to the Province's Representative a Step-Out Notice.

### **5.2 Expiry of Step-In Period**

Upon the termination or expiry of the Step-In Period:

- (a) the rights of the Province as against the Appointed Representative and the rights of the Appointed Representative as against the Province, in each case arising prior to such termination or expiry, shall be cancelled and the Appointed Representative shall be released from the obligations and liabilities assumed by it hereunder; and
- (b) the Province shall no longer deal with the Appointed Representative and shall deal with Project Co in connection with the Project Agreement and any other Province Project Document (other than this Agreement).

### **5.3 Project Co Remains Bound**

Subject to Section 6.4 [Terms of Transfer] of this Agreement, Project Co shall continue to be bound by the terms of the Project Agreement and any other Province Project Document (other than this Agreement) notwithstanding the delivery of an Indicative Notice, a Step-In Notice, a Step-Out Notice, the commencement of a Step-In Period, the occurrence of a Step-Out Date or any action by the Agent (in either or both of its capacities, including as Collateral Agent), Appointed Representative or the Senior Lenders or any provision of this Agreement. Project Co shall remain liable for any unpaid amounts due and payable to the Province by Project Co under the Project Agreement. Any notice, demand, request, consent, approval objection, agreement or other communication given, made or issued by the Province to the Appointed Representative in accordance with this Agreement during the Step-In Period shall be deemed simultaneously to have been given to Project Co.

## **PART 6 SENIOR LENDER REPLACEMENT OF PROJECT CO**

### **6.1 Project Co Transfer Notice**

Subject to Section 6.2 [Province Consent] of this Agreement, at any time:

- (a) during an Indicative Notice Period; or
- (b) during the Step-In Period,

the Agent may, on 30 days' prior written notice to the Province's Representative and (if a Step-In Period has commenced) any Appointed Representative, take any action available to it to cause the transfer of Project Co's rights and liabilities under the Project Agreement and any other Province Project Document to a Suitable Substitute Project Co in accordance with the provisions of Section 6.4 [Terms of Transfer] of this Agreement.

### **6.2 Province Consent**

The Province shall notify the Agent as to whether any person to whom the Agent proposes to transfer Project Co's rights and liabilities under the Project Agreement and any other Project Document is a Suitable Substitute Project Co as soon as reasonably practicable (and in any event not later than 20 Business Days) after the date of receipt from the Agent of all information reasonably required by the Province to decide whether the proposed transferee is a Suitable Substitute Project Co. This section shall not apply if the proposed transferee is the Agent itself.

### **6.3 Withholding of Consent**

The Province shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Co.

### **6.4 Terms of Transfer**

Upon the transfer referred to in Section 6.1 [Project Co Transfer Notice] of this Agreement becoming effective (the date of such effectiveness, the "**Transfer Date**");

- (a) Project Co and the Province shall be released from their obligations to each other under the Project Agreement and any other Province Project Document (the “**Discharged Obligations**”);
- (b) the Suitable Substitute Project Co and the Province shall assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Co instead of Project Co;
- (c) the rights of Project Co against the Province under the Project Agreement, and any other Province Project Document and vice versa shall be cancelled (the “**Discharged Rights**”);
- (d) the Suitable Substitute Project Co and the Province shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Co instead of Project Co;
- (e) any subsisting ground for termination of the Project Agreement by the Province shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked;
- (f) the Province shall enter into a lenders’ remedies agreement on substantially the same terms as this Agreement with the Suitable Substitute Project Co and a representative of senior lenders lending to the Suitable Substitute Project Co; and
- (g) any Default Points that arose prior to that time shall be deemed to have no effect.

**PART 7  
INSURANCE**

**7.1 Release of Insurance Proceeds**

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Lending Agreements and the Project Agreement, the Agent and the Province shall permit, and shall not exercise any rights under the Senior Lending Agreements or the Project Agreement, as applicable, or take any other steps to prevent, the release of any and all Insurance Proceeds for application in accordance with Section 6.18 [Application of Proceeds of Insurance] of the Project Agreement or funds under Section 8.7(b) of the Project Agreement for application in accordance therewith, as the case may be.

**PART 8  
COVENANTS, REPRESENTATIONS AND WARRANTIES**

**8.1 Province Covenants**

The Province shall:

- (a) as soon as is reasonably practicable, at Project Co’s expense or that of the Agent, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Project Co taking a transfer in accordance with Part 6 [Senior Lender Replacement of Project Co]

of this Agreement may reasonably require for perfecting any transfer or release under and in accordance with this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative or Suitable Substitute Project Co reasonably requires;

- (b) not, prior to the Senior Debt Discharge Date, unless the Agent has (acting reasonably) consented in writing, appoint an Insolvency Officer or commence any Insolvency Proceedings in relation to Project Co;
- (c) not approve any proposed amendment to the Financial Model in accordance with Section 2.18 [Financial Model] of the Project Agreement without first obtaining written confirmation from the Agent that such amendments are acceptable to the Senior Lenders; and
- (d) if the Agent has designated a Designated Account in accordance with Section 12.4 [Agent's Designation of Designated Account] of this Agreement, pay into such Designated Account any and all amounts that are payable by the Province to Project Co pursuant to the Project Agreement (including, without limitation, amounts payable by the Province to Project Co pursuant to Schedule 13 [Compensation on Termination] to the Project Agreement).

## **8.2 Agent Covenants**

The Agent shall promptly notify the Province's Representative when it believes the Senior Debt Discharge Date will occur.

## **8.3 Representations and Warranties of the Province and BCTFA**

The Province represents and warrants to the Agent, and acknowledges that the Agent is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, this Agreement has been duly authorized, executed, and delivered on behalf of the Province by an authorized representative of the Minister of Transportation and Infrastructure.

BCTFA represents and warrants to the Agent, and acknowledges that the Agent is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement:

- (a) all necessary corporate action has been taken by BCTFA to execute and deliver this Agreement; and
- (b) this Agreement has been duly authorized, executed and delivered on behalf of BCTFA by an authorized representative of BCTFA.

**PART 9  
TERM**

**9.1 Term**

This Agreement shall remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and
- (b) the Transfer Date.

**9.2 Agent to Notify Province**

The Agent shall promptly notify the Province's Representative as soon as reasonably practicable, but in any event no later than 20 Business Days thereafter, upon all amounts due and owing to the Secured Parties under the Senior Lending Agreements having been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders being under no further obligation to advance any monies under the relevant Senior Lending Agreements.

**PART 10  
STEP-IN RIGHTS UNDER COLLATERAL AGREEMENTS**

**10.1 Priority of Step-In Rights under Principal Contracts**

Subject always to Section 10.2 [Step-in from Termination Date] and Section 10.4 [Retention of Security for Deficiency] of this Agreement, notwithstanding any provision in any Collateral Agreement, the Province shall not exercise any right it may have pursuant to a Collateral Agreement to step-in and assume (or cause a third party designated by the Province to step-in and assume) Project Co's rights and obligations under any of the Principal Contracts or the Design-Build Contractor's rights and obligations under the ATC Supply Contract (including the issuance of a step-in notice by the Province pursuant to any Collateral Agreement), or to transfer or assign a Principal Contract, unless:

- (a) within 60 days of delivery by the relevant Principal Contractor to the Province of a Default Notice as contemplated in Section 3.1 [Notice of Default by Principal Contractor] of the relevant Collateral Agreement, the Province has not received a copy of a step-in notice delivered pursuant to a Lenders' direct agreement with the relevant Principal Contractor (the "**Lenders' Step-In Notice**");
- (b) if (i) within 60 days of delivery by the relevant Principal Contractor to the Province of a Default Notice as contemplated in Section 3.1 [Notice of Default by Principal Contractor] of the relevant Collateral Agreement, the Province has received a Lenders' Step-In Notice but (ii) within 105 days of delivery by the relevant Principal Contractor to the Province of a Default Notice as contemplated in Section 3.1 [Notice of Default by Principal Contractor] of the relevant Collateral Agreement, the Agent has not completed either a step-in and assumption of Project Co's rights and obligations under the relevant Principal Contract or the Design-Build Contractor's rights and obligations under the ATC Supply Contract or a transfer or assignment thereof; or

- (c) the Province has received the Agent's No Step-In Notice.

### **10.2 Step-in from Termination Date**

Subject to Section 10.4 [Retention of Security for Deficiency] of this Agreement, from the Termination Date, provided always that the Province has (if applicable) complied with Section 4.8 [Termination of Project Agreement during Step-In Period] of this Agreement in terminating the Project Agreement, the Province shall be free to exercise its rights under any Collateral Agreement to step-in and assume (or cause a third party designated by the Province to step-in and assume) Project Co's rights and obligations under, or to transfer or assign, any Principal Contract or the Design-Build Contractor's obligations under, or to transfer or assign, the ATC Supply Contract in accordance with a Collateral Agreement.

### **10.3 Release of Security**

Subject to Sections 10.4 [Retention of Security for Deficiency] and 10.5 [No Enforcement Action] of this Agreement, the Agent shall release and discharge (or cause to be released and discharged) at no cost to the Province, and as soon as reasonably possible, all Security in respect of each of the Principal Contracts, each Performance Security and each Guarantee in respect of which any of Project Co's rights or obligations thereunder or any of the Design-Build Contractor's rights or obligations under the ATC Supply Contract are assumed, transferred or assigned by or to the Province (or by or to a third party designated by the Province) pursuant to a Collateral Agreement.

### **10.4 Retention of Security for Deficiency**

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Secured Parties, the Secured Parties shall be entitled to retain the benefit of the Security in respect of Claims and Losses that Project Co has as against a Principal Contractor under the relevant Principal Contract (or any guarantor of such Principal Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Principal Contract (or guarantee in respect of such Principal Contract) by or to the Province (or by or to a third party designated by the Province) provided that:

- (a) the Secured Parties shall not, and shall not be entitled to, exercise any rights or take any Enforcement Action falling within the scope of paragraph (ii) of the definition thereof, in respect of any such Claim or Loss during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the Security retained by the Secured Parties pursuant to this Section 10.4 may only be exercised if and to the extent that the amount actually paid by the Province pursuant to Part 3 [Compensation on Termination for Project Co Default] of Schedule 13 [Compensation on Termination] to the Project Agreement (the "**Termination Payment**") is less than the Senior Debt Termination Amount (the amount by which the Termination Payment is (or, in the reasonable opinion of the Agent, is likely to be) less than the Senior Debt Termination Amount being herein referred to as the "**Deficiency**").



Any amounts recovered by the Secured Parties pursuant to claims referred to in this Section 10.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, shall be held by the Agent in a segregated account on terms satisfactory to the Agent and the Province, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds shall be distributed to the Agent, to the extent of the Deficiency, if any, and the balance of such funds shall be paid to the Province.

### **10.5 No Enforcement Action**

Notwithstanding the provisions of Sections 10.3 [Release of Security] and 10.4 [Retention of Security for Deficiency] of this Agreement or any other provision of this Agreement, during the period commencing on the date on which a Principal Contractor delivers to the Province a Default Notice as contemplated in Section 3.1 [Notice of Default by Principal Contractor] of the relevant Collateral Agreement and ending on the earlier of:

- (a) the Total Completion Date; and
- (b) the date on which the Province receives a Lenders' Step-In Notice referred to in Section 10.1 [Priority of Step-In Rights under Principal Contracts] of this Agreement;

the Secured Parties shall not exercise any rights or take any Enforcement Action falling within the scope of paragraph (ii) of the definition thereof in Section 1.1 [Definitions] of this Agreement in respect of any of the Principal Contracts, other than in respect of the Claims and Losses referred to in Section 10.4 [Retention of Security for Deficiency] of this Agreement (and then only in accordance with the provisions of that Section), if such action would materially prejudice the ability of the Province to exercise any of its rights under or in respect of any of the Principal Contracts, any Performance Securities or any Guarantee or would materially impair the on-going performance under any of the Principal Contracts.

### **10.6 Assignment of Principal Contracts by Secured Parties**

The Secured Parties shall not transfer or assign any Principal Contract except to a Suitable Substitute Project Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Project Co in accordance with Part 6 [Senior Lender Replacement of Project Co] of this Agreement.

## **PART 11 ASSIGNMENT**

### **11.1 Restriction on Assignment**

No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Part.

### **11.2 Assignment by Agent**

The Agent may assign or transfer all of its rights and obligations under this Agreement to a successor Agent in accordance with the Senior Lending Agreements without the consent of the Province provided that the Agent delivers to the Province not less than 10 Business Days prior to such assignment

or transfer a notice setting out such contact information regarding the assignee or transferee as the Province may reasonably require. Upon any such assignment or transfer,

- (a) the Agent shall be released from all obligations and liabilities under this Agreement that have been so assigned or transferred;
- (b) the successor Agent and all other parties hereto shall have the same rights and obligations among themselves as they would have had if the successor Agent had been an original party to this Agreement; and
- (c) this Agreement shall be construed as if all references to the former Agent were replaced by references to the successor Agent.

The Province and Project Co shall, upon request by the successor Agent, enter into a new lenders' remedies agreement with the successor Agent on substantially the same terms as this Agreement.

### **11.3 Assignment by Province**

The Province shall, with notice to the Agent, assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee in accordance with Section 16.4 [Assignment by the Province and BCTFA] of the Project Agreement and, in circumstances where the Province is released from all of its obligations and liabilities under the Project Agreement pursuant to Section 16.5 [Release of the Province and BCTFA on Assignment] thereof, the Province shall at the same time be released from all of its obligations and liabilities under this Agreement.

### **11.4 Assignment by Project Co**

Project Co may only assign, transfer or otherwise dispose of any interest in this Agreement in accordance with Part 16 [Assignment, Change in Ownership and Subcontracting] of the Project Agreement.

## **PART 12 MISCELLANEOUS**

### **12.1 *Financial Administration Act***

The Agent and Project Co acknowledge that they are aware of the provisions of the *Financial Administration Act* (British Columbia).

### **12.2 Province Rights of Termination**

If:

- (a) there occurs a Project Co Default referred to in Section 12.1(h), (i) or (j) or Section 12.3(b) of the Project Agreement;

- (b) the Indicative Notice Period expires and the Agent has not given a Step-In Notice or an Indicative Transfer Notice (or any Indicative Transfer Notice given has been withdrawn) prior to such expiry;
- (c) the Appointed Representative or Agent has given a Step-Out Notice; or
- (d) the Step-In Period ends and no Transfer Date has occurred,

then the Province will be entitled to act upon any grounds for termination available to it under the Project Agreement whenever occurring (including any grounds in respect of which the Province previously gave a Termination Notice to the Agent under Section 3.1 [Termination Notice] of this Agreement, and with respect to those grounds, for greater certainty, the Province need not give any further notice or discharge any further obligation or be subject to any further limitation under this Agreement) and subject always to the provisions of the Project Agreement to terminate the Project Agreement by notice to Project Co having immediate effect.

### **12.3 Rights of Agent Preserved**

The right of the Agent to cause the transfer to a Suitable Substitute Project Co of Project Co's rights and liabilities under the Project Agreement, or otherwise to exercise the Agent's rights under this Agreement, shall be unaffected by any Project Co Default including prior termination of the Project Agreement resulting from or in connection with a Project Co Insolvency Event, and the Province will, in such circumstances if so requested by the Agent, enter into a replacement Project Agreement with the Agent, or the Suitable Substitute Project Co, as the case may be, on the same terms and conditions as the original Project Agreement, and with all the same obligations and liabilities as existed at the date of termination, as if the original Project Agreement had never been so terminated.

### **12.4 Agent's Designation of Designated Account**

At any time the Agent may, by giving notice to the Province's Representative, designate an account (the "**Designated Account**") to which the Province shall make payments pursuant to Section 8.1(d) of this Agreement. Such notice shall set out sufficient particulars of the Designated Account to enable the Province to make such payments thereto. Project Co acknowledges and agrees that payment by the Province to the Designated Account of any amount that is payable by the Province to Project Co pursuant to the Project Agreement (including, without limitation, amounts payable by the Province to Project Co pursuant to Schedule 13 [Compensation on Termination] to the Project Agreement) shall constitute full and complete satisfaction of the Province's obligation under the Project Agreement to pay such amount to Project Co.

## **PART 13 GENERAL PROVISIONS**

### **13.1 [Not Used]**

### **13.2 Project Co Covenant**

Project Co acknowledges and consents to the arrangements set out in this Agreement and shall not to do or omit to do or suffer or permit to be done or omitted to be done anything that may prevent any

party from enforcing its rights under this Agreement. Project Co has no right to enforce any provision of this Agreement.

**13.3 Conflict or Inconsistency**

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.

**13.4 Dispute Resolution Procedure under Project Agreement**

- (a) The provisions of Section 1.4 [Submission to Jurisdiction] of this Agreement shall not apply to any dispute that is properly the subject matter of the applicable dispute resolution process under the Project Agreement. In particular, without limiting the generality of the foregoing, following a step-in pursuant to Part 4 [Step-In] of this Agreement, any disputes with respect to any of the subject matters of the Project Agreement shall be resolved in accordance with the applicable dispute resolution procedure thereunder.
- (b) Any and all issues or disputes between or among the Province, BCTFA, the Agent and Project Co hereunder shall be Confidential Information for the purposes of the Project Agreement.

**13.5 Amendments**

No amendment to this Agreement shall be binding unless it is in writing and signed by each of the parties hereto.

**13.6 Notices**

Any notice, demand, request, consent, approval, objection, agreement or other communication required or permitted to be given, made or issued under this Agreement must, unless otherwise specifically provided in this Agreement, be in writing signed by the providing party and delivered by hand, sent by a recognized courier service (with delivery receipt requested), or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

- (a) if to the Province or the Province's Representative:

Ministry of Transportation and Infrastructure  
5B – 940 Blanshard Street  
Victoria, B.C.  
V8W 3E6

Attention: The Deputy Minister of Transportation and Infrastructure  
Email: •

with copies to:

•

Attention: •  
Email: •

(b) if to BCTFA:

BC Transportation Financing Authority  
c/o Ministry of Transportation and Infrastructure  
5B – 940 Blanshard Street  
Victoria, British Columbia  
V8W 3E6

Attention: The Chief Executive Officer  
Facsimile: (250) 387-6431

With an electronic copy, for information purposes only, to: •

(c) if to the Agent or the Agent's Representative:

•

Attention: •  
Email: •

with copies to:

•

Attention: •  
Email: •

(d) if to Project Co or Project Co's Representative:

• [NTD: must be a BC address]

Attention: •  
Email: •

or to such other address, facsimile transmission number or electronic mail address as any party or its representative may, from time to time, designate to the other parties and their representatives in the manner set out above. Any such notice or communication shall be considered to have been received:

(e) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

- (f) if sent by facsimile transmission during business hours on a Business Day, upon the sender receiving confirmation of the successful transmission and, if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and
- (g) if sent by electronic transmission during business hours on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
  - (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice (and provided that a machine generated or other automated email response, including, but not limited to a “read receipt”, is not effective acknowledgement for the purposes hereof); or
  - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

### **13.7 Waiver**

Except as expressly provided otherwise in this Agreement, any waiver of any provision of this Agreement shall only be effective if in writing signed by the waiving party, and no other failure by any party at any time to exercise a right under or enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver shall only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.

### **13.8 Further Assurances**

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

### **13.9 Relationship of the Parties**

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto shall be deemed to constitute the parties a partnership, joint venture or any other similar such entity. Neither the Agent nor any of its representatives are or shall be deemed to be an employee or agent of the Province or BCTFA for any purpose.

### **13.10 Binding Effect**

Subject to the provisions of Part 11 [Assignment] of this Agreement, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

### **13.11 Counterparts**

This Agreement may be executed in one or more counterparts. Any single counterpart of a set of counterparts executed, in either case, by all of the parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or PDF form, provided that any party providing its signature in PDF form shall promptly forward to each other party an original signed copy of this Agreement.

### **13.12 Remedies Cumulative**

- (a) Except as otherwise expressly provided in this Agreement:
  - (i) all rights and remedies of the Agent under this Agreement and the Senior Lending Agreements are cumulative and are in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Agent under this Agreement or the Senior Lending Agreements or at law or in equity; and
  - (ii) subject to the terms of this Agreement and the Senior Lending Agreements, the Agent may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.
- (b) Except as otherwise expressly provided in this Agreement:
  - (i) all rights and remedies of the Province under this Agreement and the Project Agreement are cumulative and are in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or the Project Agreement or at law or in equity; and
  - (ii) subject to the terms of this Agreement and the Project Agreement, the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

### **13.13 Joint and Several**

- (a) If Project Co is comprised of more than one legal entity, the obligations and liabilities of Project Co under this Agreement shall be the obligations and liabilities of each legal entity comprising Project Co, jointly and severally with each other such legal entity.
- (b) If Project Co is a general partnership, the obligations and liabilities of Project Co under this Agreement shall be the obligations and liabilities of Project Co and each of the partners, jointly and severally with each other.

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

**BROADWAY SUBWAY PROJECT  
PROJECT AGREEMENT  
SCHEDULE 14: LENDERS' REMEDIES AGREEMENT**

*Commercial in Confidence  
EXECUTION COPY*

**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 TRANSPORTATION** )  
**AND INFRASTRUCTURE** in the )  
presence of: )  
\_\_\_\_\_ )

(Witness)

\_\_\_\_\_  
•  
•, Ministry of Transportation and Infrastructure

**BC TRANSPORTATION FINANCING AUTHORITY**  
by its authorized signatory:

Per:

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

**[AGENT]**  
by its authorized signatories:

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

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

**[PROJECT CO]**  
by its authorized signatories:

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



**BROADWAY SUBWAY PROJECT  
PROJECT AGREEMENT  
SCHEDULE 14: LENDERS' REMEDIES AGREEMENT**

***Commercial in Confidence  
EXECUTION COPY***

30

Per:

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