

**SCHEDULE 19
COLLATERAL AGREEMENT**

• COLLATERAL AGREEMENT

AMONG

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

- and -

BC TRANSPORTATION AND FINANCING AUTHORITY

- and -

[PROJECT CO]

- and -

[PRINCIPAL CONTRACTOR]

- and -

[GUARANTOR]

•, 201•

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• COLLATERAL AGREEMENT

THIS AGREEMENT dated as of the • day of •, 201•

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:

**BRITISH COLUMBIA TRANSPORTATION FINANCING
AUTHORITY**

(“BCTFA”)

AND:

[PROJECT CO]

(“Project Co”)

AND:

[PRINCIPAL CONTRACTOR]

(the “Principal Contractor”)

AND:

[GUARANTOR]

(the “Guarantor”)

[NTD: Form of agreement for each Principal Contractor to be adapted depending on whether there is an Interface Agreement, and for any other specific requirements (including in relation to the Designer) related to each particular Principal Contract.]

WHEREAS:

A. The Province, BCTFA and Project Co have entered into the Project Agreement pursuant to which Project Co has agreed to carry out the Project described therein;

B. Project Co and the Principal Contractor have entered into the Principal Contract whereby the Principal Contractor has agreed to carry out and complete that part of the Project as more particularly described in the Principal Contract;

C. [The Principal Contractor and • (the “Designer”) have entered into a subcontract (the “Design Subcontract”) pursuant to which the Designer has agreed to perform design services relating to the Project Work that the Principal Contractor has agreed to perform under the Principal Contract.]

D. The obligations of the Principal Contractor under the Principal Contract have been guaranteed by the Guarantor pursuant to the Guarantee; and

E. The Project Agreement requires Project Co to enter into, and to cause the Principal Contractor and the Guarantor to enter into, this Agreement with the Province and BCTFA.

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 INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires:

- (a) **“Agreement”** means this Agreement;
- (b) **“Assignment and Assumption Documents”** has the meaning given in Section 3.7(a) of this Agreement;
- (c) **“Default Event”** has the meaning given in Section 3.1 [Notice of Default by Principal Contractor] of this Agreement;
- (d) **“Default Notice”** has the meaning given in Section 3.1 [Notice of Default by Principal Contractor] of this Agreement;
- (e) **[“Designer” has the meaning given in Recital C to this Agreement;]**
- (f) **[“Design Subcontract” has the meaning given in Recital C to this Agreement;]**
- (g) **“Guarantee”** means the guarantee of even date herewith granted by the Guarantor in favour of Project Co, as amended, supplemented or replaced from time to time in accordance with this Agreement;
- (h) **“New Principal Contract”** has the meaning given in Section 3.7(b) of this Agreement;
- (i) **“No Step-In Notice”** has the meaning given in Section 3.5 [No Step-In] of this Agreement;

- (j) **["No Suspension Period" has the meaning given in Section 3.3(b)(ii) of this Agreement.]**
- (k) **"PC Background IP" has the meaning given in Section 4.1(c)(i) of this Agreement;**
- (l) **"PC Project Intellectual Property" has the meaning given in Section 4.1(a) of this Agreement;**
- (m) **"PC Third Party IP" has the meaning given in Section 4.1(c)(ii) of this Agreement;**
- (n) **"Performance Securities" means the • provided or to be provided by the Principal Contractor to Project Co pursuant to the terms of the Principal Contract, as amended, supplemented or replaced from time to time in accordance with this Agreement;**
- (o) **"Principal Contract" means[, together,] the • agreement of even date herewith between Project Co and the Principal Contractor [and the interface agreement of even date herewith among [Project Co,] the Principal Contractor and •, each] as amended, supplemented or replaced from time to time in accordance with this Agreement; [NTD: This term will include any interface agreement to which the Principal Contractor is a party, even if Project Co is not a party.]**
- (p) **"Project Agreement" means the agreement titled "Project Agreement" of even date herewith made among the Province, BCTFA and Project Co, as amended, supplemented or replaced from time to time;**
- (q) **"Step-In Date" has the meaning given in Section 4.1 [Intellectual Property] of this Agreement;**
- (r) **"Step-In Determination Period" means the period beginning on the date of the receipt by the Province's Representative of a copy of a Default Notice from the Principal Contractor under Section 3.1 [Notice of Default by Principal Contractor] of this Agreement and ending on the later to occur of:**
 - (i) the date that is 45 days following the date of such receipt of a Default Notice by the Province's Representative; and
 - (ii) the date that is 15 days following the date upon which the Province becomes entitled, in accordance with Section 10.1 [Priority of Step-In Rights under Principal Contracts] of the Lenders' Remedies Agreement, to exercise its rights as set out in and pursuant thereto;
- (s) **"Step-In Notice" has the meaning given in Section 3.4 [Step-In Rights] of this Agreement;**
- (t) **"Substitute" has the meaning given in Section 3.6(a) of this Agreement; and**

- (u) 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.

1.2 Interpretation

This Agreement shall be interpreted according to the provisions set out in Part 2 [Interpretation] of Schedule 1 to the Project Agreement, *mutatis mutandis*, save to the extent that the context or the express provisions of this Agreement otherwise require.

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

Where in accordance with the Dispute Resolution Procedure a particular matter is referred to Court or a party initiates a proceeding in Court, the Court, subject to applicable Laws, has exclusive jurisdiction to entertain and determine such matter or proceeding, and each of the parties irrevocably submits to the exclusive jurisdiction of the Court.

1.5 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 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 power, authority or discretion conferred under Laws; or
 - (iii) administer, apply and enforce Laws.
- (b) Neither the Principal Contractor nor the Guarantor is entitled to claim or receive any compensation or other relief whatsoever as a result of anything described in any of Sections 1.5(a)(i) to (iii) inclusive of this Agreement.

1.6 Language

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

1.7 Review, Approval, Inspection and Audit by the Province

- (a) If any review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection is provided, performed or made by or on behalf of the Province, BCTFA or the Province's Representative under, pursuant to, or in respect of, the Project Agreement or any of the other Project Documents, whether pursuant to the Review Procedure or the Consent Procedure or otherwise, or if no comment or objection is made by the Province, BCTFA or the Province's Representative pursuant to the Review Procedure or the Consent Procedure or otherwise:
 - (i) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, shall be for assessment by the Province, BCTFA or the Province's Representative of general compliance by Project Co with its obligations under the Project Agreement or the other Project Documents only; and
 - (ii) notwithstanding any other provisions of this Agreement, the Project Agreement or any of the other Project Documents, no such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, now or in the future, and whether or not involving any negligent act or negligent omission or error on the part of the Province, BCTFA or the Province's Representative or any person for whom the Province is in law responsible:
 - (A) shall relieve or exempt or be deemed to relieve or exempt Project Co, the Principal Contractor, the Guarantor or any other person from any of its obligations and liabilities under this Agreement, the Project Agreement or any other Province Project Document or at law or in equity, except in the circumstances and to the extent expressly provided in Section 1.7(b) of this Agreement;
 - (B) shall constitute a waiver or release or be deemed to be a waiver or release by the Province or BCTFA of any duty or liability owed by Project Co, the Principal Contractor, the Guarantor or any other person to the Province, or of any indemnity given by Project Co or any other person to the Province, BCTFA or any Province Indemnified Person under the Project Agreement or any other Province Project Document or by the Principal Contractor under this Agreement, except in the circumstances and to the extent expressly provided in Section 1.7(b) of this Agreement;

- (C) shall create or impose or be deemed to create or impose any requirement, liability, covenant, agreement or obligation on the Province or BCTFA except to the extent expressly set out in the Project Agreement as an express consequence of the review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection; or
 - (D) shall entitle the Principal Contractor or the Guarantor to make any Claims against the Province or BCTFA for, or to recover from the Province or BCTFA, any Losses.
- (b) If any consent, approval, acceptance, certification, determination or other permission of, or review, inspection, examination, audit or testing by, the Province or BCTFA or the Province's Representative is expressly required under the Project Agreement or any other Province Project Document in order for any specific act or conduct of Project Co to be in compliance with (or not in breach of) any provision of the Project Agreement or any other Province Project Document, and if such consent, approval, acceptance, certification, determination or other permission is given by, or such review, inspection, examination, audit or testing is carried out by, the Province or BCTFA or the Province's Representative (as the case may be) in any particular circumstance, Project Co shall be relieved of the obligation under the Project Agreement or other Province Project Document to obtain the specific consent, approval, acceptance, certification, determination or other permission given, or to have the review, inspection, examination, audit or testing carried out, but only for the purposes and in the particular circumstances in which it was given or carried out and to which it applied.

PART 2 AGREEMENTS RELATING TO PROJECT

2.1 Acknowledgement of Documents

Each of the parties hereto acknowledges having received and reviewed a copy of the Project Agreement, the Principal Contract, the Guarantee and each of the Performance Securities, and acknowledges the respective terms thereof.

2.2 Termination or Amendment of Documents

- (a) Project Co and the Principal Contractor shall not terminate or permit the termination of, assign or permit the assignment of, make or agree to or permit the making of any material amendment to or material variation of, make or agree to any departure from, or waive or fail to enforce any material rights it may have under, or allow others in any material respect to depart from their material obligations under, enter into any agreement or document which would materially affect the interpretation or application of, or enter into any contract or agreement in replacement of the Principal Contract or any of the Performance Securities except in full compliance with Part 16 [Assignment, Change in Ownership and Subcontracting] of the Project Agreement.

- (b) Project Co, the Guarantor and the Principal Contractor shall not terminate or permit the termination of, assign or permit the assignment of, make or agree to or permit the making of any material amendment to or material variation of, make or agree to any departure from, or waive or fail to enforce any material rights it may have under, or allow others in any material respect to depart from their material obligations under, enter into any agreement or document which would materially affect the interpretation or application of, or enter into any contract or agreement in replacement of the Guarantee except in full compliance with Part 16 [Assignment, Change in Ownership and Subcontracting] of the Project Agreement.

2.3 Duty of Care, Representation and Warranty

The Principal Contractor covenants with the Province and BCTFA that:

- (a) it shall perform all of the terms of the Principal Contract to be performed on the part of the Principal Contractor, and has carried out, supplied and performed and shall carry out, supply and perform the works and services it is to carry out, supply and perform under the Principal Contract in accordance with the Principal Contract;
- (b) it shall maintain in full force and effect all of the Performance Securities in accordance with the terms of the Principal Contract and this Agreement; and
- (c) it has exercised and will continue to exercise all reasonable professional skill, care and diligence in carrying out, supplying and completing the works and services under the Principal Contract to be expected of a properly qualified contractor experienced in carrying out, supplying and completing works and services in relation to projects of similar scope, size, type and complexity as the Project, including, without limiting the generality of the foregoing, the selection of goods and materials, design and the satisfaction of the specifications, criteria and requirements referred to in or included in the Principal Contract,

provided that neither the Province nor BCTFA shall be entitled under this Agreement to exercise against the Principal Contractor any rights or remedies to which it becomes entitled as a result of a breach of any of the covenants set out in Section 2.3(a), 2.3(b) or 2.3(c) of this Agreement until the date on which the Province or BCTFA exercises its step-in rights pursuant to Section 3.4 [Step-In Rights] of this Agreement (whether such breach occurs prior to, on or after such date). Project Co, the Principal Contractor and the Guarantor agree that they shall cause the issuers of the Performance Securities and the Guarantor to enter into such agreements or other documents as reasonably necessary to grant the Province and BCTFA the benefits available to Project Co under the Performance Securities and the Guarantee as security for the obligations of the Principal Contractor under Sections 2.3(a), 2.3(b) and 2.3(c) of this Agreement.

2.4 Principal Contractor Liability

- (a) The obligations and liabilities of the Principal Contractor under this Agreement and the Principal Contract, and the obligations and liabilities of the Guarantor under this Agreement and the Guarantee, shall not be modified, released, limited, diminished or in any way affected by:

- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or on behalf of the Province or BCTFA, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by the Province or BCTFA of the Province's Representative or any other person to make or carry out any inspection, investigation or enquiry or to review the progress of or otherwise report to the Province in respect of the Project or any aspect thereof, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the Province or BCTFA.
- (b) In the event that the Province's Representative delivers a Step-In Notice pursuant to Section 3.4 [Step-In Rights] of this Agreement:
 - (i) the Principal Contractor shall have no greater liability to the Province, BCTFA or any Substitute than it would have had to Project Co under the Principal Contract had the Principal Contract continued with Project Co as a party, and the Principal Contractor shall be entitled in any proceedings by the Province, BCTFA or any Substitute in relation to the Principal Contract to rely on any liability limitations in the Principal Contract; and
 - (ii) the Guarantor shall have no greater liability to the Province, BCTFA or any Substitute than it would have had to Project Co under the Guarantee, had the Guarantee continued with Project Co as a recipient thereof, and the Guarantor shall be entitled in any proceedings by the Province, BCTFA or any Substitute in relation to the Guarantee to rely on any liability limitations in the Guarantee.
- (c) The Principal Contractor shall not have any liability for delay in the completion of the work to be completed under the Principal Contract to the extent that such delay is caused directly by the Province or BCTFA and results from the exercise by the Province or BCTFA of its step-in rights under this Agreement, provided that, for greater certainty, the foregoing will not relieve the Principal Contractor from any liability for delay under the Principal Contract which arises prior to or after the exercise by the Province or BCTFA of its step-in rights under this Agreement from any other cause.

2.5 Representations and Warranties of the Province and BCTFA

The Province represents and warrants to the Principal Contractor and the Guarantor, and acknowledges that the Principal Contractor and the Guarantor are 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 Principal Contractor and the Guarantor, and acknowledges that the Principal Contractor and the Guarantor are relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, all necessary corporate action has been taken by BCTFA to execute and deliver this Agreement and this Agreement has been duly authorized, executed, and delivered on behalf of BCTFA by an authorized representative of BCTFA.

2.6 [Agreements Regarding Design Subcontract

- (a) **The Principal Contractor shall perform and shall continue to perform all of the terms of the Design Subcontract to be performed on the Principal Contractor's part.**
- (b) **The Principal Contractor shall ensure that all portions of the Design provided by the Designer under the Design Subcontract are prepared under the supervision and direction of and, where appropriate, are prepared by Professional Engineers or such other professionals as appropriate to the nature of the Design who are registered in British Columbia and lawfully authorized to practice in British Columbia.**
- (c) **The Principal Contractor shall ensure that the Designer complies with all provisions of the Project Agreement (including the Design and Construction Certification Procedure, the Design Management Plan, the Design Quality Management Plan and all other applicable Design and Construction Requirements) applicable to the design work performed and to be performed by the Designer pursuant to the Design Subcontract and performs all functions which, pursuant to the terms of the Project Agreement, are to be performed by the Designer in respect of the Project Work that the Principal Contractor has agreed to perform under the Principal Contract.**
- (d) **The Principal Contractor acknowledges and agrees that neither the entering into of the Design Subcontract nor anything contained therein qualifies, limits or relieves the Principal Contractor from any of its duties or obligations under the Principal Contract and that the Principal Contract remains and will remain liable for all design and other work to be performed and services to be provided under the terms of the Principal Contract notwithstanding any default or failure to perform by the Designer under the Design Subcontract.**
- (e) **The Principal Contractor shall ensure that it has full power and authority to grant to the Province and BCTFA, as required by Section 4.1 [Ownership of Intellectual Property and License to Province] of this Agreement, a Complete License in respect of all drawings, details, plans, specifications, reports, documents, data, designs and inventions which have been or are hereafter provided by the Designer in the course of performing the services provided for in the Design Subcontract and, where requested by the Province or BCTFA, shall cause the Designer to execute all documents and to do all acts which may be necessary to bring into effect or confirm the terms of such Complete License.]**

**PART 3
DEFAULT, TERMINATION AND STEP-IN**

3.1 Notice of Default by Principal Contractor

If the Principal Contractor gives Project Co a notice (a "**Default Notice**") of any breach, non-performance or default (each, a "**Default Event**") under the Principal Contract giving the Principal Contractor a right to do any of the following:

- (a) terminate the Principal Contract;
- (b) treat the Principal Contract as having been repudiated by Project Co;
- (c) **[temporarily suspend the Principal Contractor's performance thereunder,] [NTD: Will only be included in the Collateral Agreement for any Principal Contract that includes a suspension right for the Principal Contractor.];** or
- (d) end the Principal Contractor's performance thereunder,

then the Principal Contractor shall concurrently provide the Province's Representative with a copy of such Default Notice.

3.2 No Termination of Principal Contract

The Principal Contractor shall not exercise any right it may have upon the occurrence of any Default Event to terminate the Principal Contract, treat the Principal Contract as having been repudiated by Project Co or end the Principal Contractor's performance thereunder, as the case may be, unless:

- (a) the Principal Contractor first delivers a copy of a Default Notice in respect of such Default Event to the Province's Representative in accordance with Section 3.1 [Notice of Default by Principal Contractor] of this Agreement, together with reasonable detail of:
 - (i) such Default Event; and
 - (ii) any amount payable or owed by Project Co to the Principal Contractor, and any other unperformed liabilities of Project Co, under the Principal Contract either at the time of the giving of the Default Notice or arising or falling due within 120 days of the delivery of such Default Notice (and, if any such amounts change prior to the expiry of the Step-In Determination Period in accordance with this Agreement, the Principal Contractor shall provide to the Province's Representative further notice of such changed amounts);
- (b) on or before the expiry of the Step-In Determination Period:
 - (i) all such relevant Default Events have not been remedied; and
 - (ii) the Principal Contractor either:
 - (A) has not received a Step-In Notice from the Province's Representative pursuant to Section 3.4 [Step-In Rights] of this Agreement; or
 - (B) has received a No-Step-In Notice from the Province's Representative pursuant to Section 3.5 [No Step-In] of this Agreement; and
- (c) the Agent has not exercised any of its step-in or transfer rights pursuant to and in accordance with, respectively, Part 4 [Step-In] or Part 6 [Senior Lender Replacement of Project Co] of the Lenders' Remedies Agreement or any collateral agreement between

the Principal Contractor and the Senior Lenders or the Agent on behalf of the Senior Lenders.

3.3 [No Suspension of Performance]

[NTD: This provision will only be included in the Collateral Agreement for any Principal Contract that includes a suspension right for the Principal Contractor.]

The Principal Contractor shall not exercise any right it may have upon the occurrence of any Default Event to temporarily suspend its performance under the Principal Contract, unless:

- (a) the Principal Contractor first delivers a copy of a Default Notice in respect of such Default Event to the Province's Representative in accordance with Section 3.1 [Notice of Default by Principal Contractor] of this Agreement, together with all additional information required pursuant to Section 3.2(a) of this Agreement; and
- (b) both:
 - (i) the Principal Contractor has confirmed in writing to the Province's Representative that the Senior Lenders (or any person on their behalf) have not agreed to pay the Principal Contractor in accordance with the Principal Contract for work performed by the Principal Contractor during the period commencing on the date when the Principal Contractor, but for the provisions of this Section 3.3, would have been entitled to suspend its performance under the Principal Contract as a consequence of the Default Event and ending no sooner than the end of the Step-In Determination Period hereunder; and
 - (ii) within 15 Business Days of receipt of confirmation from the Principal Contractor pursuant to Section 3.3(b)(i) of this Agreement, neither the Province nor BCTFA has agreed by written notice given by the Province's Representative to the Principal Contractor to pay the Principal Contractor in accordance with the terms of the Principal Contract by the Principal Contractor during the period (the "No Suspension Period") commencing on the date when the Principal Contractor, but for the provisions of this Section 3.3, would have been entitled to suspend its performance under the Principal Contract as a consequence of the Default Event and ending on the earliest to occur of:
 - (A) the date on which the Agent exercises any of its step-in or transfer rights pursuant to and in accordance with, respectively, Part 4 [Step-In] or Part 6 [Senior Lender Replacement of Contractor] of the Lenders' Remedies Agreement;
 - (B) the date from which the Senior Lenders (or any person on their behalf) agrees to pay the Principal Contractor as contemplated under Section 3.3(b)(i) of this Agreement;

- (C) the date on which the Principal Contractor receives a Step-In Notice from the Province's Representative pursuant to Section 3.4 [Step-In Rights] of this Agreement (in which event the provisions of Section 3.7 [Effect of Step-In Notice] of this Agreement shall apply);
- (D) the date on which the Principal Contractor receives a No Step-In Notice from the Province's Representative pursuant to Section 3.5 [No Step-In] of this Agreement]; and
- (E) the expiry of the Step-In Determination Period,

provided that, if the Province or BCTFA provides a written notice to the Principal Contractor pursuant to Section 3.3(b)(ii) of this Agreement and thereafter fails to make payment to the Principal Contractor of any undisputed amount payable pursuant to and in accordance with the Principal Contract for work performed by the Principal Contractor during the No Suspension Period, the No Suspension Period shall terminate and the Principal Contractor may thereafter exercise any right it may have upon the occurrence of any Default Event to temporarily suspend its performance under the Principal Contract.]

3.4 Step-In Rights

Subject to the provisions of the Lenders' Remedies Agreement and in particular Part 10 [Step-In Rights under Collateral Agreements] thereof, the Province's Representative may:

- (a) in the event that the Province's Representative receives a copy of a Default Notice from the Principal Contractor under Section 3.1 [Notice of Default by Principal Contractor] of this Agreement, then on or before the expiry of the resulting Step-In Determination Period (unless prior to the expiry of the Step-In Determination Period all Default Events that were the subject matter of such Default Notice have been remedied); or
- (b) at any time at which the Province has the right, under the Project Agreement, to then terminate the Project Agreement,

deliver a notice (a "**Step-In Notice**") to the Principal Contractor and the Guarantor electing to replace Project Co under the Principal Contract and the Guarantee with the Province, BCTFA or a Substitute as designated in the Step-In Notice.

3.5 No Step-In

If, at any time after receiving a copy of a Default Notice from the Principal Contractor under Section 3.1 [Notice of Default by Principal Contractor] of this Agreement, and whether before or after the delivery of a Step-In Notice under Section 3.4 [Step-In Rights] of this Agreement, the Province or BCTFA determines that it is not, or is no longer, considering exercising its step-in rights under Section 3.4 [Step-In Rights] of this Agreement, the Province's Representative may give written notice of such determination (a "**No Step-In Notice**") to the Principal Contractor and the Guarantor and, upon the receipt of such No Step-In Notice by the Principal Contractor, the provisions of this Part 3 shall no longer be applicable with respect to any Default Event which led to the issuance of such Default Notice, or any

other event giving rise to the Province's right of termination of the Project Agreement as referred to in Section 3.4(b) of this Agreement.

3.6 Designation of Substitute

- (a) The Province's Representative may designate a third party (the "**Substitute**"), in a Step-In Notice under Section 3.4 [Step-In Rights] of this Agreement or by subsequent notice, to assume or succeed to all rights and obligations of the Province or BCTFA (as the case may be) or any previously designated Substitute, in respect of such Step-In Notice under this Agreement.
- (b) The Principal Contractor shall not have any right to approve the designation of a Substitute under Section 3.6(a) of this Agreement where such Substitute is any of the following:
 - (i) a Qualified Governmental Entity; or
 - (ii) any person who has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of Project Co under the Principal Contract, or whose obligations are guaranteed by the Province or the Federal Government.

Otherwise, the designation of a Substitute under Section 3.6(a) of this Agreement shall be subject to the approval of the Principal Contractor, such approval not to be unreasonably withheld, and provided that, in the event that the Principal Contractor has not approved or rejected a proposed Substitute within 10 Business Days of the receipt of written notice of such Substitute (or, if later, within 10 Business Days of the receipt by the Principal Contractor of any information validly requested pursuant to Section 3.6(c) of this Agreement), the Principal Contractor shall be deemed to have approved such Substitute.

- (c) The Province's Representative shall provide such information relating to any proposed Substitute requiring the approval of the Principal Contractor pursuant to Section 3.6(b) of this Agreement as the Principal Contractor may reasonably request, to the extent such information is readily available to, and may, subject to applicable Laws, be disclosed by the Province or BCTFA, and provided that such request is made prior to the expiry of the 10 Business Day period referred to in Section 3.6(b) of this Agreement.

3.7 Effect of Step-In Notice

Subject to the provisions of the Lenders' Remedies Agreement and to Section 3.5 [No Step-In] of this Agreement:

- (a) upon receipt by the Principal Contractor and the Guarantor of a Step-In Notice, the Province, BCTFA or a Substitute, as the case may be, shall:
 - (i) acquire jointly and severally with Project Co all of Project Co's rights under the Principal Contract, including all rights and benefits available to Project Co under the Guarantee (which Guarantee the Guarantor hereby expressly acknowledges

shall continue unmodified and in full force and effect notwithstanding such step-in by the Province, BCTFA or a Substitute) and the Performance Securities; and

- (ii) assume jointly and severally with Project Co only those liabilities of Project Co under the Principal Contract:
 - (A) arising after the date of the receipt by the Principal Contractor of such Step-In Notice; or
 - (B) to the extent not referred to in Section 3.7(a)(ii)(A) of this Agreement, specified in the information delivered to the Province's Representative pursuant to Section 3.2(a)(ii) of this Agreement, including any further information delivered thereunder prior to the date of the receipt by the Principal Contractor of such Step-In Notice,

and Project Co, the Principal Contractor and the Guarantor shall or shall cause the issuers of the Performance Securities to enter into, as applicable, and the Province or BCTFA shall or shall cause the Substitute, as applicable, to enter into all such agreements or other documents and grant all such consents as reasonably necessary to give effect to such assignment and assumption of the Principal Contract (together, the "**Assignment and Assumption Documents**") and issue any replacement Guarantee or Performance Securities;

- (b) at any time after the delivery of a Step-In Notice by the Province's Representative pursuant to Section 3.4 [Step-In Rights] of this Agreement, provided that at such time the Principal Contract has not otherwise expired or terminated in accordance with its terms, the Province's Representative may give notice to the Principal Contractor, the Guarantor and Project Co that the Province or BCTFA wishes, or wishes a Substitute, to enter into a new agreement with the Principal Contractor (the "**New Principal Contract**") on substantially the same terms (with such amendments as are appropriate or necessary to reflect that the new counterparty is governmental in nature), subject to Section 3.7(a) of this Agreement, as the Principal Contract, and upon receipt of such notice the Principal Contractor and the Guarantor shall enter into or shall cause the issuers of the Performance Securities to enter into, as applicable, and the Province or BCTFA shall or shall cause the Substitute, as applicable, to enter into such New Principal Contract and issue any replacement Guarantee or Performance Securities; and
- (c) if a Substitute is designated or replaced after the assignment and assumption of the Principal Contract pursuant to Section 3.7(a) of this Agreement or the entering into of a New Principal Contract pursuant to Section 3.7(b) of this Agreement, the Principal Contractor and the Guarantor shall enter into or shall cause the issuers of the Performance Securities to enter into, as applicable, and the Province or BCTFA shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents necessary to effect and confirm the succession of the Substitute to the rights and obligations of the Province, BCTFA or the previous Substitute, as the case may be, under any and all Assignment and Assumption Documents previously entered into pursuant to Section 3.7(a) of this Agreement or the New Principal Contract, as applicable, and any replacement Guarantee or Performance Securities, and to release the Province, BCTFA or

the previous Substitute, as the case may be, from all obligations and liabilities under such Assignment and Assumption Documents or such New Principal Contract, as applicable.

3.8 Smooth and Orderly Transition

- (a) Each of Project Co and the Principal Contractor shall, at its own cost, cooperate fully with the Province, BCTFA and any Substitute in order to achieve a smooth, efficient and orderly transfer of the Principal Contract pursuant to Section 3.7(a) or Section 3.7(c) of this Agreement, or the entering into a New Principal Contract pursuant to Section 3.7(b) of this Agreement, and to avoid or mitigate insofar as reasonably practicable any resulting inconvenience or cost, including in relation to the administration of the Principal Contract, ongoing supervisory activities and scheduling.
- (b) The Guarantor shall, at its own cost, cooperate fully with the Province, BCTFA and any Substitute in order to achieve a smooth, efficient and orderly assignment, assumption or reissuance of the Guarantee to the Province or BCTFA or a Substitute, as applicable, pursuant to Section 3.7 [Effect of Step-In Notice] of this Agreement.
- (c) **[The Principal Contractor shall ensure, through measures satisfactory to the Province and BCTFA, each acting reasonably, that the terms of the Design Subcontract permit the exercise by the Province or BCTFA of its step-in rights under this Agreement and that the exercise by the Province or BCTFA of its step-in rights under this Agreement shall not entitle the Designer to terminate, alter, amend or not comply with its obligations under the Design Subcontract, and that the terms of the Design Subcontract shall remain unmodified and in full force and effect, in either case notwithstanding the exercise of such step-in rights.]**
- (d) The Principal Contractor shall ensure, through measures satisfactory to the Province's Representative, acting reasonably, that the terms of the Performance Securities permit the exercise by the Province or BCTFA of its step-in rights under this Agreement and that the exercise by the Province or BCTFA of its step-in rights under this Agreement shall not entitle the issuer of any Performance Securities to terminate, alter, amend or not comply with its obligations under the Performance Securities, and that the terms of all Performance Securities shall remain unmodified and in full force and effect, in either case notwithstanding the exercise of such step-in rights and shall provide further that, upon the Province or BCTFA exercising its step-in rights, the Province, BCTFA or the Substitute, as the case may be, shall be entitled, subject to Section 3.7 [Effect of Step-In Notice] of this Agreement, to all rights and benefits under such Performance Securities as though the Province, BCTFA or the Substitute, as the case may be, were the originally named beneficiary thereunder.

3.9 Payment by Project Co and Rights of Province

- (a) Project Co shall pay to the Province or BCTFA on demand any amounts paid by the Province, BCTFA or a Substitute to the Principal Contractor pursuant to this Agreement, the Principal Contract, or any agreement or other document entered into pursuant hereto (including any amounts paid by) **the Province or BCTFA pursuant to a written notice provided to the Principal Contractor pursuant to Section 3.3(b)(ii) of this**

Agreement or by the Province, BCTFA or a Substitute pursuant to Section 3.7 [Effect of Step-In Notice] of this Agreement, any Assignment and Assumption Documents or any New Principal Contract) save to the extent that such amounts are payments for Project Work carried out by the Principal Contractor which the Province or BCTFA has not previously paid for as part of a Progress Payment made to Project Co pursuant to the Project Agreement (collectively, the “**Principal Contractor Payments**”); and

- (b) any Principal Contractor Payments shall constitute amounts due and payable by Project Co to the Province or BCTFA under the Project Agreement and the Province and BCTFA shall have all the same rights and remedies under the Project Agreement in respect of payment or non-payment by Project Co of the Principal Contractor Payments as the Province or BCTFA would have for any payment or non-payment by Project Co of any other amounts that are due and payable by Project Co to the Province or BCTFA under the Project Agreement, including the Province’s and BCTFA’s right of set-off in accordance with the provisions of the Project Agreement including Section 10.4 [Province’s Right of Set Off] of the Project Agreement and Section 5.4 [Rights of Set-Off] of Schedule 13 [Compensation on Termination] to the Project Agreement.

PART 4 DATA AND INFORMATION

4.1 Ownership of Intellectual Property and License to Province

[NTD: This Section is subject to change based upon the specific technology/intellectual property to be provided by the Principal Contractor in accordance with Project Co’s proposal.]

Notwithstanding any other provision at any time contained in the Principal Contract (except as may otherwise be agreed to in writing between the Province and the Principal Contractor), the parties hereby agree that, with effect from the date on which the Province or BCTFA exercises its step-in rights pursuant to Section 3.4 [Step-In Rights] of this Agreement (the “**Step-In Date**”):

- (a) the Principal Contractor shall exclusively own, automatically upon its generation or creation, all Intellectual Property Rights, in and to any Project Intellectual Property that after the Step-In Date is created, brought into existence, acquired, licensed or used by the Principal Contractor, directly or indirectly, for the purposes of the design or construction of the Project or otherwise for the purposes of the work to be carried out under the Principal Contract (the “**PC Project Intellectual Property**”);
- (b) the Principal Contractor agrees that, at no cost to the Province or BCTFA, it:
 - (i) hereby irrevocably and unconditionally conveys, transfers and assigns, or shall procure such conveyance, transfer or assignment from any third parties, or for all rights that arise only upon creation agrees that it shall cause to be conveyed, transferred and assigned, to the Province all right, title and interest in and to the Records (to the extent produced by or on behalf of the Principal Contractor after the Step-In Date) and any Modifications to Province Provided Materials (to the extent that such Modifications have been or are made by or on behalf of the

Principal Contractor after the Step-In Date), including all Intellectual Property Rights in and to any thereof;

- (ii) shall provide to the Province, upon request, executed waivers in favour of the Province and BCTFA of all moral rights in each of the PC Project Intellectual Property, the Records (to the extent produced by or on behalf of the Principal Contractor after the Step-In Date) and any Modifications to Province Provided Materials (to the extent that such Modifications have been or are made by or on behalf of the Principal Contractor after the Step-In Date), from all Persons who generated or created such PC Project Intellectual Property, Records (to the extent produced by or on behalf of the Principal Contractor after the Step-In Date) and Modifications to Province Provided Materials (to the extent that such Modifications have been or are made by or on behalf of the Principal Contractor after the Step-In Date) by one or more instruments in writing substantially in the form of the waiver of moral rights included in Schedule 20 [Waiver of Moral Rights] to the Project Agreement; and
 - (iii) shall provide to the Province, upon request, (A) copies of all materials comprising the PC Project Intellectual Property, (B) the Records (to the extent in the possession of the Principal Contractor) and (C) the Modifications to Province Provided Materials (to the extent that such Modifications have been or are made by or on behalf of the Principal Contractor after the Step-In Date), in the format or formats as may be requested by the Province from time to time. Without limiting the generality of the foregoing, the Principal Contractor shall provide the Province with copies of all software and firmware, and all updates made thereto, that are included in or relate to the PC Project Intellectual Property or the work performed by the Principal Contractor under the Principal Contract after the Step-In Date;
- (c) other than any license rights granted to the Province and BCTFA pursuant to Section 4.1(d) of this Agreement, neither the Province nor BCTFA will own any Intellectual Property Rights in:
- (i) the Background IP specifically listed and described as PC Background IP in Appendix A [PC Background IP and PC Third Party IP] to this Agreement) (the “**PC Background IP**”); and
 - (ii) the Third Party IP specifically listed and described as PC Third Party IP in Appendix A [PC Background IP and PC Third Party IP] to this Agreement (the “**PC Third Party IP**”);
- (d) the Principal Contractor, at no cost to the Province or BCTFA:
- (i) hereby unconditionally grants to the Province and BCTFA a Complete License in and to the PC Project Intellectual Property and the PC Background IP;
 - (ii) shall grant, or cause to be granted, to the Province and BCTFA a Complete License to the PC Third Party IP; and

- (iii) shall provide to the Province and BCTFA upon request by the Province at any time after the Step-In Date the source code (if any) for any Records (to the extent produced by or on behalf of the Principal Contractor after the Step-In Date) and Modifications to Province Provided Materials (to the extent such Modifications are made by or on behalf of the Principal Contractor after the Step-In Date) and shall ensure that the source code (if any) for any PC Project Intellectual Property, and for any PC Background IP or PC Third Party IP necessary or desirable to implement, operate or exploit the PC Project Intellectual Property, is deposited in escrow or otherwise rendered available to the Province and BCTFA in a manner and on terms acceptable to the Province and BCTFA in their discretion;
- (e) for greater certainty, the license provisions contained in Section 4.1(d) of this Agreement do not extend to include any non-specialized third party software, technology or other Intellectual Property that is generally commercially available;
- (f) nothing in Section 4.1(d) of this Agreement shall give the Province or BCTFA the right to sell, lease, license, sublicense or otherwise transfer, convey or alienate any software included in the PC Project Intellectual Property, the PC Background IP or the PC Third Party IP (whether for commercial consideration or not) to any person, otherwise than as may be necessary or desirable to use the PC Background IP or the PC Third Party IP for Complete License Purposes;
- (g) if any Complete License granted under Section 4.1(d) of this Agreement cannot be validly granted without the consent of a third party, the Principal Contractor, at the Principal Contractor's expense, shall use its best efforts to obtain such consent and, without limiting any of its other obligations, shall indemnify and hold harmless the Province and each Province Indemnified Person from and against any and all Direct Losses and Claims in any way arising from the Principal Contractor's failure to obtain such consent;
- (h) if the Principal Contractor is unable to provide any assignments, licenses or waivers required to be provided under this Agreement, the Principal Contractor shall, at no additional cost to the Province or BCTFA, replace the portion of the PC Third Party IP, PC Background IP or PC Project Intellectual Property for which the assignment, license or waiver cannot be provided, with an alternative product or technology that meets the Province's requirements;
- (i) except as otherwise agreed in writing with the Province and BCTFA, the Principal Contractor hereby represents, warrants and covenants that:

 - (i) all PC Project Intellectual Property, Records (to the extent produced by or on behalf of the Principal Contractor after the Step-In Date) and Modifications to Province Provided Materials (to the extent such Modifications are made by or on behalf of the Principal Contractor after the Step-In Date) are and will be original and do not and will not infringe any third party's Intellectual Property Rights;
 - (ii) it owns, or will as necessary acquire, the rights associated with the PC Project Intellectual Property, the PC Background IP and the PC Third Party IP as may be

necessary to provide the assignments or grant the licenses to the Province and BCTFA required by the terms of this Agreement; and

- (iii) it has obtained or will obtain waivers of moral rights in the form set out in Schedule 20 [Waiver of Moral Rights] to the Project Agreement from all persons as necessary to provide the waivers in favour of the Province and BCTFA as required by the terms of this Agreement; and
- (j) the Principal Contractor hereby irrevocably designates and appoints the Province, BCTFA and their duly authorized officers and agents as the Principal Contractor's agent and attorney-in-fact to act for and on behalf of the Principal Contractor to execute, deliver and file any and all documents with the same legal force and effect as if executed by the Principal Contractor, provided that:
 - (i) the Province, BCTFA or any such other person shall only be entitled to rely upon such designation and appointment in circumstances where the Province and BCTFA are unable for any reason to secure the execution by the Principal Contractor of any document reasonably required for the purpose of giving effect to, or establishing compliance with, the Principal Contractor's obligations under this Section 4.1; and
 - (ii) if a dispute as to whether or not the Principal Contractor has complied with any such obligation has been referred to the Dispute Resolution Procedure, the Province, BCTFA or any such other person shall only be entitled to rely upon such designation and appointment in relation to such obligation after such dispute has been resolved in favour of the Province and BCTFA.

4.2 License of Intellectual Property to Principal Contractor

- (a) With effect from the Step-In Date, the Province shall grant to the Principal Contractor, only during the term of the Principal Contract and only for the purpose of carrying out the work required to be carried out under, and performing all obligations of the Principal Contractor under, the Principal Contract, a non-transferable, non-exclusive, royalty-free limited license (but with no right to grant sub-licenses except to subcontractors of the Principal Contractor) to:
 - (i) use and reproduce the Records and any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Principal Contractor for any purpose relating to such work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such license, the Disclosed Data), and all Intellectual Property Rights therein;
 - (ii) make Modifications to any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Principal Contractor for any purpose relating to such work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right

and authority to grant such license, the Disclosed Data), and all Intellectual Property Rights therein; and

(iii) use all Project Marks designated by the Province for the Project and the Project Infrastructure from time to time, provided that the Principal Contractor's use of such Project Marks shall at all times be subject to compliance by the Principal Contractor with any and all guidelines provided by the Province to the Principal Contractor from time to time in respect of the use thereof.

(b) Notwithstanding Section 4.2(a), nothing in this Agreement shall be construed as a permission or authorization for the Principal Contractor to, and the Principal Contractor shall not, copy or make Modifications to any materials, documents or data (including Disclosed Data) or other information owned by third parties without the prior written consent of such third party owner.

4.3 Indemnity

Without limiting Section 4.1(g) of this Agreement, with effect from the Step-In Date, the Principal Contractor shall indemnify and hold harmless on first written demand the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims which the Province and the Province Indemnified Persons, or any of them, may suffer or incur arising as a result of allegations of or findings of infringement of Intellectual Property Rights or other similar rights of other persons, including breach of confidence, breach of moral rights and unauthorized use (except to the extent such unauthorized use is as a result of a Province Non-Excusable Event or any such event of or by any Province Indemnified Persons) by the Province or any of the Province Indemnified Persons in respect of any PC Project Intellectual Property, PC Background IP or PC Third Party IP.

4.4 Disclaimer

(a) Neither the Province nor any of the Province Indemnified Persons gives, has given or shall be deemed to have given any representation, warranty or undertaking to the Principal Contractor[, **the Designer**] or the Guarantor that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of this Agreement) relevant or material to the Project, the Project Infrastructure, the Project Site or any obligations undertaken by the Principal Contractor under the Principal Contract[, **by the Designer under the Design Subcontract**] or by the Guarantor under the Guarantee.

(b) Without limiting the generality of Section 4.4(a) of this Agreement, neither the Province nor any of the Province Indemnified Persons shall be liable to the Principal Contractor[, **the Designer**] or the Guarantor (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province, the Province Indemnified Persons or any person for whom the Province or a Province Indemnified Person is in law responsible) in respect of any failure to disclose or make available (whether before or after the date of this Agreement) to Project Co, the Principal Contractor[, **the Designer**] or the Guarantor any information, documents or data, any failure to keep the Disclosed Data up to date or any failure to inform Project Co, the Principal Contractor[, **the Designer**] or the Guarantor (whether

before or after the date of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

- (c) Neither the Province nor any of the Province Indemnified Persons shall have any liability to the Principal Contractor[, **the Designer**] or the Guarantor (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province, the Province Indemnified Persons or any person for whom the Province or a Province Indemnified Person is in law responsible) in respect of, and the liability of the Guarantor under the Guarantee shall not be released, lessened or limited in any way as a result of, any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.

4.5 Confidentiality

The Principal Contractor and the Guarantor shall each be bound to comply with obligations identical to the confidentiality obligations that Project Co is obligated to comply with under the Project Agreement in relation to all information obtained by the Principal Contractor or the Guarantor, as the case may be from any other party under or in connection with the Project.

4.6 Survival of Obligations

The obligations under this Part 4 shall survive and shall continue in force and effect after the termination or expiry of this Agreement, the Principal Contract[, **the Design Subcontract**] and the Guarantee.

PART 5 ASSIGNMENT

5.1 Assignment by Principal Contractor and Guarantor

The Principal Contractor and the Guarantor shall not assign, transfer, mortgage, pledge, charge or create any trust, security interest or other interest in this Agreement except in accordance with Section 16.10 [Restriction on Changes to Principal Contracts] of the Project Agreement.

5.2 Assignment by the Province and BCTFA

Each of the Province and BCTFA shall, with notice to the Principal Contractor and the Guarantor, 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 or BCTFA (as applicable) 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] of the Project Agreement, the Province or BCTFA (as applicable) shall at the same time be released from all of its obligations and liabilities under this Agreement. The Principal Contractor acknowledges that the Province and BCTFA shall not be required to obtain its consent to any such assignment or transfer.

5.3 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 6
GENERAL PROVISIONS**

6.1 Financial Administration Act

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

6.2 Project Co Covenants

- (a) Project Co acknowledges and agrees to the terms of this Agreement and shall not to do or omit to do 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.
- (b) Project Co acknowledges and agrees that the Principal Contractor shall not be in breach of the Principal Contract and the Guarantor shall not be in breach of the Guarantee by reason of complying with its or their obligations hereunder.

6.3 Responsibilities, Obligations and Rights under Project Agreement

The provisions of this Agreement are without prejudice to, and in no way limit, restrict or impair, the responsibilities, obligations and rights of Project Co or the rights of the Province and BCTFA under and as set forth in the Project Agreement.

6.4 Conflict or Inconsistency

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

6.5 Disputes

- (a) Except as otherwise expressly provided in this Agreement:
 - (i) any dispute between the parties hereto with respect to any of the subject matters of this Agreement, whether or not the provisions of this Agreement specifically refer the dispute to the Dispute Resolution Procedure;
 - (ii) any matter or dispute between the parties to this Agreement that, by the express terms of this Agreement, is to be resolved or determined by the Dispute Resolution Procedure; and

- (iii) any disagreement between the parties hereto with respect to any matter that, by the express terms of this Agreement, is to be agreed upon by the parties,

shall be resolved in accordance with, and the parties shall comply with, the Dispute Resolution Procedure, provided that, for greater certainty, the parties acknowledge and agree that, following a step-in by the Province, BCTFA or a Substitute hereunder, any disputes with respect to any of the subject matters of the Principal Contract or the Guarantee 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, Project Co, the Principal Contractor and the Guarantor, whether or not subject to the Dispute Resolution Procedure, shall be Confidential Information for the purposes of this Agreement and the Project Agreement.

6.6 Amendments

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

6.7 Notices

Any notice, demand, request, consent, approval, objection, agreement or other communication required or permitted to be given, made or issued under this Agreement shall, unless otherwise specifically provided in this Agreement, be considered to have been sufficiently given if in writing signed by the providing party and delivered by hand, sent by a recognized courier service (with delivery receipt requested), or transmitted by facsimile or electronic transmission to the address, facsimile transmission number and/or electronic email 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, British Columbia
V8W 3E6

Attention: The Deputy Minister of Transportation and Infrastructure
Facsimile: 250-387-6431

- (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

- (c) if to Project Co or Project Co's Representative:

• **[NTD: Must be a BC Address.]**

Attention: •
Email: •
Facsimile: •

- (d) if to the Principal Contractor:

• **[NTD: Must be a BC Address.]**

Attention: •
Email: •
Facsimile: •

- (e) if to the Guarantor:

• **[NTD: Must be a BC Address or provide agent for service.]**

Attention: •
Email: •
Facsimile: •

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:

- (f) 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;
- (g) 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
- (h) 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.

6.8 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 or remedy under or to 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.

6.9 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 others 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.

6.10 Relationship of the Parties

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

6.11 Binding Effect

Subject to the provisions of Part 5 [Assignment] of this Agreement, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

6.12 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.

6.13 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.
- (c) If the Principal Contractor is comprised of more than one legal entity, the obligations and liabilities of the Principal Contractor under this Agreement shall be the obligations and liabilities of each legal entity comprising the Principal Contractor, jointly and severally with each other such legal entity.
- (d) If the Principal Contractor is a general partnership, the obligations and liabilities of the Principal Contractor under this Agreement shall be the obligations and liabilities of the Principal Contractor and each of its partners, jointly and severally with each other.
- (e) If the Guarantor is comprised of more than one legal entity, the obligations and liabilities of the Guarantor under this Agreement shall be the obligations and liabilities of each legal entity comprising the Guarantor, jointly and severally with each other such legal entity. **[NTD: Guarantor obligations under this Agreement will be joint and several only if obligations under Guarantee are also joint and several.]**

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

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

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT
SCHEDULE 19: COLLATERAL AGREEMENT**

*Commercial in Confidence
EXECUTION COPY*

BC TRANSPORTATION AND FINANCING AUTHORITY
by its authorized signatory:

Per:

Name:
Title:

[PROJECT CO]
by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

[PRINCIPAL CONTRACTOR]
by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT
SCHEDULE 19: COLLATERAL AGREEMENT**

***Commercial in Confidence
EXECUTION COPY***

[GUARANTOR]

by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

**APPENDIX A
PC BACKGROUND IP AND PC THIRD PARTY IP**

[NTD: To be completed based on information contained in Project Co's proposal to specifically identify, describe and indicate the owner or owners of all PC Background IP and PC Third Party IP.]