

**SCHEDULE 17  
COLLATERAL AGREEMENT**

**• COLLATERAL AGREEMENT**

**AMONG**

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

- and -

**BC TRANSPORTATION FINANCING AUTHORITY**

- and -

**[PRINCIPAL SUBCONTRACTOR]**

**[- and -**

**[GUARANTOR]]**

- and -

**[PRIMARY CONTRACTOR]**

**•, 20•**

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**EVERGREEN LINE RAPID TRANSIT PROJECT  
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**Execution**

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Appendix A    Dispute Resolution Procedure

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**• COLLATERAL AGREEMENT**

THIS AGREEMENT dated as of the • day 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:

**[PRINCIPAL SUBCONTRACTOR]**

(the “**Principal Subcontractor**”)

**[AND:**

**[GUARANTOR]**

(the “**Guarantor**”)]

AND:

**[PRIMARY CONTRACTOR]**

(the “**Primary Contractor**”)

**[NTD: Form of agreement for each Principal Subcontractor to be adapted depending on whether the Primary Contractor is a party to the Principal Subcontract or not, whether there is a Guarantor, whether there is an Interface Agreement, and for any other specific requirements (including in relation to the Designer) related to each particular Principal Subcontract.]**

WHEREAS:

- A. The Province, BCTFA and the Primary Contractor have entered into the Project Agreement pursuant to which the Primary Contractor has agreed to carry out the Project described therein;
- B. The Primary Contractor and the Principal Subcontractor have entered into the Principal Subcontract whereby the Principal Subcontractor has agreed to carry out and complete that part of the Project as more particularly described in the Principal Subcontract;

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- C. [The Primary Contractor and [•] (the “Designer”) have entered into a design subcontract (the “Design Subcontract”) pursuant to which the Designer has agreed to perform design services relating to the Work that the Principal Subcontractor has agreed to perform under the Principal Subcontract;]
- D. [The obligations of the Principal Subcontractor under the Principal Subcontract have been guaranteed by the Guarantor pursuant to the Guarantee;] and
- E. The Project Agreement requires the Primary Contractor to enter into, and to cause the Principal Subcontractor [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**

#### **PART 1.1 Definitions**

Unless otherwise specified or the context otherwise requires:

- (a) “**Agreement**” means this Agreement;
- (b) “**Arbitrator**” means an arbitrator appointed in accordance with paragraph 8 or 9, as the case may be, of Appendix A to this Agreement;
- (c) “**Assignment and Assumption Documents**” has the meaning given in Section 3.7(a) of this Agreement;
- (d) “**Default Event**” has the meaning given in Section 3.1 [Notice of Default by Principal Subcontractor] of this Agreement;
- (e) “**Default Notice**” has the meaning given in Section 3.1 [Notice of Default by Principal Subcontractor] of this Agreement;
- (f) [**“Design Subcontract” has the meaning given in Recital C to this Agreement;**]
- (g) [**“Designer” has the meaning given in Recital C to this Agreement;**]
- (h) “**Dispute Resolution Procedure**” means the procedure set out in Appendix A [Dispute Resolution Procedure] to this Agreement;
- (i) [**“Guarantee” means the guarantee dated of even date herewith granted by the Guarantor in favour of the Primary Contractor, as amended, supplemented or replaced from time to time in accordance with this Agreement;**]
- (j) “**New Principal Subcontract**” has the meaning given in Section 3.7(b) of this Agreement;

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- (k) “**No Step-In Notice**” has the meaning given in Section 3.5 [No Step-In] of this Agreement;
- (l) [**No Suspension Period** has the meaning given in Section 3.3(b)(ii) of this Agreement;]
- (m) “**Performance Securities**” means the • provided or to be provided by the Principal Subcontractor to the Primary Contractor pursuant to the terms of the Principal Subcontract, as amended, supplemented or replaced from time to time in accordance with this Agreement;
- (n) “**Principal Subcontract**” means[, together,] the • agreement dated • between the Primary Contractor and the Principal Subcontractor [**and the interface agreement dated • among [the Primary Contractor,] the Principal Subcontractor 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 Subcontractor is a party, even if the Primary Contractor is not a party.]
- (o) “**Principal Subcontractor Provided Project Intellectual Property**” has the meaning given in Section 4.1(a) of this Agreement;
- (p) “**Project Agreement**” means the agreement titled “Design Build Finance Agreement” dated of even date herewith made between the Province, BCTFA and the Primary Contractor, 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 Subcontractor under Section 3.1 [Notice of Default by Principal Subcontractor] 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 Subcontracts] 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.

**PART 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.

**PART 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.

**PART 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 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.

**PART 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 of any minister (including the Minister), ministry (including the Ministry), agency, board, commission, corporation or other entity of the Province, including any right, power or authority:
  - (i) to enact, amend, repeal or replace any enactment or regulation made under any enactment;
  - (ii) to exercise or refrain from exercising any power, authority or discretion conferred under Laws; or
  - (iii) to administer, apply and enforce Laws.
- (b) Neither the Principal Subcontractor [**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.

**PART 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.

**PART 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 or 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 or 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 or BCTFA or the Province's Representative of general compliance by the Primary Contractor 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 or 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 the Primary Contractor, the Principal Subcontractor[, **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;
  - (B) shall constitute a waiver or release by the Province or BCTFA of any duty or liability owed by the Primary Contractor, the Principal Subcontractor[, **the Guarantor**] or any other person to the Province or BCTFA, or of any indemnity given by the Primary Contractor or any other person to the Province or the BCTFA under the Project Agreement or any other Province Project Document or by the Principal Subcontractor under this Agreement;
  - (C) shall create or impose any requirement, liability, covenant, agreement, duty or obligation on the Province or BCTFA except to the extent expressly set out in the Project Agreement as a 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 Subcontractor [**or the Guarantor**] or any other person to make any Claim against the Province or BCTFA for, or to recover from the Province or BCTFA, any Losses.
- (b) Any decision made by the Province's Representative under the Review Procedure or the Consent Procedure shall, once all applicable disputes arising in respect thereof have been resolved in accordance with Schedule 2 [Representatives, Review Procedure and Consent Procedure], be final, subject only to being opened up, reviewed or revised by the Province in its discretion if errors or further relevant facts are revealed after the decision has been made.

**PART 2**

**AGREEMENTS RELATING TO PROJECT**

**PART 2.1 Acknowledgement of Documents**

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

**PART 2.2 Termination or Amendment of Documents**

- (a) The Primary Contractor and the Principal Subcontractor 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, waive or fail to enforce any material rights it may have under, 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 Subcontract or any of the Performance Securities except in full compliance with Part 18 [Assignment, Change in Ownership and Control and Subcontracting] of the Project Agreement.
- (b) **[The Primary Contractor, the Guarantor and the Principal Subcontractor 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, waive or fail to enforce any material rights it may have under, 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 18 [Assignment, Change in Ownership and Control and Subcontracting] of the Project Agreement.]**

**PART 2.3 Duty of Care, Representation and Warranty**

The Principal Subcontractor covenants with the Province and BCTFA that:

- (a) it shall perform all of the terms of the Principal Subcontract to be performed on the part of the Principal Subcontractor, 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 Subcontract in accordance with the Principal Subcontract;
- (b) it shall maintain in full force and effect all of the Performance Securities in accordance with the terms of the Principal Subcontract 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 Subcontract 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 Subcontract;

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provided that neither the Province nor BCTFA shall be entitled under this Agreement to exercise against the Principal Subcontractor 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 earlier of (i) 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), (ii) (subject to and without prejudice to the rights of the Secured Parties under, and as defined in, the Lenders' Remedies Agreement) the date on which the Province gives the Principal Subcontractor notice stating that a Primary Contractor Default has occurred and (iii) the Termination Date. The Primary Contractor, the Principal Subcontractor **[and the Guarantor]** agree that, in the event that the earlier of such dates is the Substantial Completion Date, 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, with effect from the Substantial Completion Date, the benefits available to the Primary Contractor under the Performance Securities **[and the Guarantee]** as security for the obligations of the Principal Subcontractor under Sections 2.3(a), 2.3(b) and 2.3(c) of this Agreement.

**PART 2.4 Principal Subcontractor Liability**

- (a) The obligations and liabilities of the Principal Subcontractor under this Agreement and the Principal Subcontract[, **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 Subcontractor shall have no greater liability to the Province, BCTFA or any Substitute than it would have had to the Primary Contractor under the Principal Subcontract had the Principal Subcontract continued with the Primary Contractor as a party, and the Principal Subcontractor shall be entitled in any proceedings by the Province, BCTFA or any Substitute in relation to the Principal Subcontract to rely on any liability limitations in the Principal Subcontract; and
  - (ii) **[the Guarantor shall have no greater liability to the Province, BCTFA or any Substitute than it would have had to the Primary Contractor under the Guarantee had the Guarantee continued with the Primary Contractor 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 Subcontractor shall not have any liability for delay in the completion of the work to be completed under the Principal Subcontract to the extent that such delay is caused directly by the Province and results from the exercise by the Province or BCTFA of its step-in rights under this Agreement; provided, for greater certainty, that the foregoing will not relieve the Principal Subcontractor from any liability for delay under the Principal Subcontract which arises prior to or after the exercise by the Province or BCTFA of its stepin rights under this Agreement or from any other cause.

**PART 2.5 Representations and Warranties of the Province and BCTFA**

- (a) The Province represents and warrants to the Principal Subcontractor **[and the Guarantor]**, and acknowledges that the Principal Subcontractor **[and the Guarantor]** is relying upon such representation and warranty in entering into this Agreement, that at the date of this Agreement this Agreement has been executed and delivered on behalf of the Province by an authorized representative of the Minister of Transportation and Infrastructure.
- (b) BCTFA represents and warrants to the Principal Subcontractor **[and the Guarantor]**, and acknowledges that the Principal Subcontractor **[and the Guarantor]** is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement:
  - (i) all necessary corporate action has been taken by BCTFA to execute and deliver this Agreement; and
  - (ii) this Agreement has been executed and delivered on behalf of BCTFA by an authorized representative of BCTFA.

**PART 2.6 [Agreements Regarding Design Subcontract**

- (a) **The Principal Subcontractor shall perform and shall continue to perform all of the terms of the Design Subcontract to be performed on the Principal Subcontractor's part.**
- (b) **The Principal Subcontractor 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 Subcontractor shall ensure that the Designer complies with all provisions of the Project Agreement (including the Design and Construction Certification Procedures, the Design Management Plan, the Design Quality Management Plan and all other applicable Design-Build 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 Work that the Principal Subcontractor has agreed to perform under the Principal Subcontract.**
- (d) **The Principal Subcontractor acknowledges and agrees that neither the entering into of the Design Subcontract nor anything contained therein qualifies, limits or relieves the Principal Subcontractor from any of its duties or obligations under the Principal**

**Subcontract and that the Principal Subcontract 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 Subcontract notwithstanding any default or failure to perform by the Designer under the Design Subcontract.**

- (e) **The Principal Subcontractor shall ensure that it has full power and authority to grant to the Province and BCTFA, as required by Section 4.1 [Intellectual Property] of this Agreement, a Complete License or, as the case may be, a Limited 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 or, as the case may be, such Limited License.]**

### **PART 3**

#### **DEFAULT, TERMINATION AND STEP-IN**

##### **PART 3.1 Notice of Default by Principal Subcontractor**

If the Principal Subcontractor gives the Primary Contractor a notice (a “**Default Notice**”) of any breach, non-performance or default (each, a “**Default Event**”) under the Principal Subcontract that may give the Principal Subcontractor a right to do any of the following:

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

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

##### **PART 3.2 No Termination of Principal Subcontract**

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

- (a) the Principal Subcontractor 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 Subcontractor] of this Agreement, together with reasonable detail of:
- (i) such Default Event; and
- (ii) any amount payable or owed by the Primary Contractor to the Principal Subcontractor, and any other unperformed liabilities of the Primary Contractor,

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under the Principal Subcontract 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 Subcontractor 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 Subcontractor 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 Primary Contractor] of the Lenders' Remedies Agreement and / or any collateral agreement between the Principal Subcontractor and the Senior Lenders or the Agent on behalf of the Senior Lenders.

**PART 3.3[No Suspension of Performance**

**[NTD: This Section 3.3 provision will only be included in the Collateral Agreement for any Principal Subcontract that includes a suspension right for the Principal Subcontractor]**

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

- (a) **the Principal Subcontractor 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 Subcontractor] of this Agreement, together with all additional information required pursuant to Section 3.2(a) of this Agreement; and**
- (b) **both:**
  - (i) **the Principal Subcontractor 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 Subcontractor in accordance with the Principal Subcontract for work performed by the Principal Subcontractor during the period commencing on the date when the Principal Subcontractor, but for the provisions of this Section, would have been entitled to suspend its performance under the Principal Subcontract 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 Subcontractor pursuant to Section 3.3(b)(i) of this Agreement, the Province**

or BCTFA has not agreed by written notice given by the Province's Representative to the Principal Subcontractor to pay the Principal Subcontractor in accordance with the Principal Subcontract for work performed in accordance with the terms of the Principal Subcontract by the Principal Subcontractor during the period (the "No Suspension Period") commencing on the date when the Principal Subcontractor, but for the provisions of this Section, would have been entitled to suspend its performance under the Principal Subcontract 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 Primary 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 Subcontractor as **contemplated under Section 3.3(b)(i) of this Agreement**;
- (C) the date on which the Principal Subcontractor 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 Subcontractor 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 Subcontractor pursuant to Section 3.3(b)(ii) of this Agreement and thereafter fails to make payment to the Principal Subcontractor of any undisputed amount payable pursuant to and in accordance with the Principal Subcontract for work performed by the Principal Subcontractor during the No Suspension Period, the No Suspension Period shall terminate and the Principal Subcontractor may thereafter exercise any right it may have upon the occurrence of any Default Event to temporarily suspend its performance under the Principal Subcontract.]

#### **PART 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 Subcontractor under Section 3.1 [Notice of Default by Principal Subcontractor] 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,

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deliver a notice (a “**Step-In Notice**”) to the Principal Subcontractor [**and the Guarantor**] electing to replace the Primary Contractor under the Principal Subcontract [**and the Guarantee**] with the Province, BCTFA or a Substitute as designated in such Step-In Notice.

**PART 3.5 No Step-In**

If, at any time after receiving a copy of a Default Notice from the Principal Subcontractor under Section 3.1 [Notice of Default by Principal Subcontractor] 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 Subcontractor [**and the Guarantor**] and, upon the receipt of such No Step-In Notice by the Principal Subcontractor, the provisions of this Part 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.

**PART 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 Subcontractor 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;
  - (ii) any person who has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of the Primary Contractor under the Principal Subcontract, 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 Subcontractor, such approval not to be unreasonably withheld, and provided that, in the event that the Principal Subcontractor 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 Subcontractor of any information validly requested pursuant to Section 3.6(c) of this Agreement), the Principal Subcontractor 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 Subcontractor pursuant to Section 3.6(b) of this Agreement as the Principal Subcontractor 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.

**PART 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 Subcontractor **[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 the Primary Contractor all of the Primary Contractor's rights under the Principal Subcontract, including all rights and benefits available to the Primary Contractor 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 or a Substitute) and the]** Performance Securities; and
    - (ii) assume jointly and severally with the Primary Contractor only those liabilities of the Primary Contractor under the Principal Subcontract:
      - (A) arising after the date of the receipt by the Principal Subcontractor 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 Subcontractor of such Step-In Notice,
- and the Primary Contractor, the Principal Subcontractor **[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 Subcontract (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 Subcontract has not otherwise expired or terminated in accordance with its terms, the Province's Representative may give notice to the Principal Subcontractor, **the Guarantor]** and the Primary Contractor that the Province or BCTFA wishes, or wishes a Substitute, to enter into a new agreement with the Principal Subcontractor (the "**New Principal Subcontract**") 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 Subcontract, and upon receipt of such notice the Principal Subcontractor **[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 Subcontract 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 Subcontract pursuant to Section 3.7(a) of this Agreement or the entering into of

a New Principal Subcontract pursuant to Section 3.7(b) of this Agreement, the Principal Subcontractor **[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 Subcontract, 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 Subcontract, as applicable.

**PART 3.8 Smooth and Orderly Transition**

- (a) Each of the Primary Contractor and the Principal Subcontractor 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 Subcontract pursuant to Section 3.7(a) or Section 3.7(c) of this Agreement, or the entering into of a New Principal Subcontract 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 Subcontract, 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, BCTFA or a Substitute, as applicable, pursuant to Section 3.7 [Effect of Step-In Notice] of this Agreement.]**
- (c) **[The Principal Subcontractor shall ensure, through measures satisfactory to the Province's Representative, acting reasonably, that the terms of the Design Subcontract permit the exercise by the Province and BCTFA of their step-in rights under this Agreement and that the exercise by the Province and BCTFA of their 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 Subcontractor 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 and BCTFA of their 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.

**PART 3.9 Payment by Primary Contractor and Rights of Province**

- (a) The Primary Contractor shall pay to the Province or BCTFA on demand any amounts paid by the Province, BCTFA or a Substitute to the Principal Subcontractor pursuant to this Agreement, the Principal Subcontract, 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 Subcontractor 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 Subcontract) (collectively, the **“Principal Subcontractor Payments”**).
- (b) Any Principal Subcontractor Payments shall constitute amounts due and payable by the Primary Contractor to the Province 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 the Primary Contractor of the Principal Subcontractor Payments as the Province or BCTFA would have for any payment or non-payment by the Primary Contractor of any other amounts that are due and payable by the Primary Contractor 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 12.12 [Province’s Right of Set Off] of the Project Agreement and Section 5.4 [Rights of Set-Off] of Schedule 12 [Compensation on Termination] to the Project Agreement.

**PART 4**

**INTELLECTUAL PROPERTY, DATA AND INFORMATION**

**PART 4.1 Intellectual Property**

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

Notwithstanding any other provision at any time contained in the Principal Subcontract (except as may otherwise be agreed to in writing between the Province and the Principal Subcontractor), 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 Subcontractor 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 Subcontractor, directly or indirectly, for the purposes of the design or construction of the Evergreen Line or otherwise for the purposes of the work to be carried out under the Principal Subcontract (the **“Principal Subcontractor Provided Project Intellectual Property”**);
- (b) the Principal Subcontractor agrees that, at no cost to the Province, 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 Subcontractor 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 Subcontractor after the Step-In Date), including all Intellectual Property Rights thereto;

- (ii) shall provide to the Province, upon request, executed waivers in favour of the Province of all moral rights in the Principal Subcontractor Provided Project Intellectual Property, the Records (to the extent produced by or on behalf of the Principal Subcontractor 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 Subcontractor after the Step-In Date), from all Persons who generated or created Principal Subcontractor Provided Project Intellectual Property, Records (to the extent produced by or on behalf of the Principal Subcontractor after the Step-In Date) or Modifications to Province Provided Materials (to the extent that such Modifications have been or are made by or on behalf of the Principal Subcontractor 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 27 [Waiver of Moral Rights] of the Project Agreement; and
  - (iii) shall provide to the Province, upon request, (A) copies of all materials comprising the Principal Subcontractor Provided Project Intellectual Property, (B) the Records (to the extent in the possession of the Principal Subcontractor) 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 Subcontractor 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 Subcontractor shall provide the Province with copies of all software and firmware, and all updates made thereto, that are included in or relate to the Principal Subcontractor Provided Project Intellectual Property or the work performed by the Principal Subcontractor under the Principal Subcontract after the Step-In Date;
  - (c) other than any license rights granted to the Province pursuant to Section 4.1(d) of this Agreement, the Province will not own or be entitled to any Intellectual Property Rights in: **[NTD: To be completed, including the determination of whether Background Technology or Third Party Technology needs to be individually listed or reference can be made to Sections 17.3(c)(i) and (ii) of the Project Agreement, based on information contained in Preferred Proponent’s Proposal.]**
    - (i) the following Background Technology (as may be more specifically described in Schedule • [•] to this Agreement):
      - (A) •; and
      - (B) •;
- (the “**PS Background Technology**”); and

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- (ii) the following Third Party Technology (as may be more specifically described in Schedule • [•] to this Agreement):
  - (A) •; and
  - (B) •;(the “**PS Third Party Technology**”);
- (d) the Principal Subcontractor, at no cost to the Province:
  - (i) hereby unconditionally grants to the Province a Complete License in and to the Principal Subcontractor Provided Project Intellectual Property and the PS Background Technology;
  - (ii) shall, subject to Section 4.1(i) of this Agreement, grant, or cause to be granted, to the Province a Limited License to the PS Third Party Technology on terms and conditions acceptable to the Province, acting reasonably; and
  - (iii) shall, unless otherwise agreed by the Province in its discretion, ensure that any source code for any Principal Subcontractor Provided Project Intellectual Property, Records (to the extent produced by or on behalf of the Principal Subcontractor after the Step-In Date), Modifications to Province Provided Materials (to the extent such Modifications are made by or on behalf of the Principal Subcontractor after the Step-In Date), PS Background Technology or PS Third Party Technology is deposited in escrow or otherwise rendered available to the Province in a manner and on terms acceptable to the Province in its 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 and that the Province, in its discretion, has determined will be licensed by the Province directly from the owner of such software, technology or other Intellectual Property;
- (f) nothing in Section 4.1(d)(i) of this Agreement shall give the Province the right to sell, lease, license, sublicense or otherwise transfer, convey or alienate any software included in the Principal Subcontractor Provided Project Intellectual Property or the PS Background Technology (whether for commercial consideration or not) to any person, otherwise than as may be necessary or desirable to use the Principal Subcontractor Provided Project Intellectual Property or the PS Background Technology for Complete License Purposes;
- (g) if the Complete License granted under Section 4.1(d)(i) of this Agreement or any Limited License described in Section 4.1(d)(ii) of this Agreement, as the case may be, cannot be validly granted without the consent of a third party, the Principal Subcontractor, at the Principal Subcontractor’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 Subcontractor’s failure to obtain such consent;

**STRICTLY CONFIDENTIAL**

- (h) if any Limited License referred to in Section 4.1(d)(ii) of this Agreement cannot be negotiated on terms and conditions acceptable to the Province, acting reasonably, the Principal Subcontractor shall replace that PS Third Party Technology in accordance with Section 4.1(i) of this Agreement;
- (i) if the Province, acting reasonably, does not accept the proposed terms and conditions for any Limited License or the Principal Subcontractor is unable to provide any assignments, licenses or waivers required to be provided under this Agreement, the Principal Subcontractor shall, at no additional cost to the Province, replace the portion of the PS Third Party Technology, PS Background Technology or Principal Subcontractor Provided Project Intellectual Property for which the Province has not accepted the Limited License terms and conditions, or for which the assignment, license or waiver, as the case may be, cannot be provided, with an alternative product or technology that meets the Province's requirements;
- (j) without prejudice to Section 6.9 [Further Assurances] of this Agreement, the Principal Subcontractor shall, at any time, perform the acts, execute and deliver the writings, and give the assurances as may be reasonably required by the Province to effect, evidence and perfect any Limited License described in Section 4.1(d)(ii);
- (k) except as otherwise agreed in writing with the Province, the Principal Subcontractor hereby represents, warrants and covenants that:
  - (i) all Principal Subcontractor Provided Project Intellectual Property, Records (to the extent produced by or on behalf of the Principal Subcontractor 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 Subcontractor 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 Principal Subcontractor Provided Project Intellectual Property, the PS Background Technology and the PS Third Party Technology as may be necessary to grant the licenses to the Province 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 27 [Waiver of Moral Rights] of the Project Agreement from all persons as necessary to provide the waivers in favour of the Province as required by the terms of this Agreement; and
- (l) the Principal Subcontractor hereby irrevocably designates and appoints the Province and its duly authorized ministers, officers and agents as the Principal Subcontractor's agent and attorney-in-fact to act for and on behalf of the Principal Subcontractor to execute, deliver and file any and all documents with the same legal force and effect as if executed by the Principal Subcontractor, provided that:
  - (i) the Province or any such other person shall only be entitled to rely upon such designation and appointment in circumstances where the Province is unable for any reason to secure the execution by the Principal Subcontractor of any document reasonably required for the purpose of giving effect to, or establishing compliance with, the Principal Subcontractor's obligations under this Section 4.1 [Intellectual Property]; and

- (ii) if a dispute as to whether or not the Principal Subcontractor has complied with any such obligation has been referred to the Dispute Resolution Procedure, the Province 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.

**PART 4.2 License to the Principal Subcontractor**

- (a) With effect from the Step-In Date, the Province shall grant to the Principal Subcontractor, only during the term of the Principal Subcontract and only for the purpose of carrying out the work required to be carried out under, and performing all obligations of the Principal Subcontractor under, the Principal Subcontract, a non-transferable, non-exclusive, royalty-free limited license (but with no right to grant sub-licenses except to subcontractors of the Principal Subcontractor) to:
  - (i) use and reproduce the Records and any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Principal Subcontractor 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 Subcontractor 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 Subcontractor's Use of such Project Marks shall at all times be subject to compliance by the Principal Subcontractor with any and all guidelines issued by the Province 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 Subcontractor to, and the Principal Subcontractor 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.

**PART 4.3 Indemnity**

Without limiting Section 4.1(g) of this Agreement, with effect from the Step-In Date, the Principal Subcontractor shall indemnify and hold harmless on first written demand the Province, BCTFA and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims which the Province, BCTFA 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 by the Province, BCTFA or any of the Province Indemnified Persons in respect of any Principal Subcontractor Provided Project Intellectual Property, PS Background Technology or PS Third Party Technology.

**PART 4.4 Disclaimer**

- (a) Neither the Province nor BCTFA gives, has given or shall be deemed to have given any representation, warranty or undertaking to the Principal Subcontractor[, **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 Site or any obligations undertaken by the Principal Subcontractor under the Principal Subcontract[, **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 BCTFA shall be liable to the Principal Subcontractor[, **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 or BCTFA or any person for whom the Province is in law responsible) in respect of any failure to disclose or make available (whether before or after the date of this Agreement) to the Primary Contractor, the Principal Subcontractor[, **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 the Primary Contractor, the Principal Subcontractor[, **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 BCTFA shall have any liability to the Principal Subcontractor[, **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 or BCTFA or any person for whom the Province 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.

**PART 4.5 Confidentiality**

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

**PART 4.6 Survival of Obligations**

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

**PART 5**

**ASSIGNMENT**

**PART 5.1 Assignment by Principal Subcontractor [and Guarantor]**

The Principal Subcontractor **[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 18.9 [Restriction on Changes to Principal Subcontracts] of the Project Agreement.

**PART 5.2 Assignment by Province and BCTFA**

The Province and BCTFA shall, with notice to the Principal Subcontractor **[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 18.4 [Assignment by the Province] of the Project Agreement and, in circumstances where the Province and/or BCTFA is released from all of its obligations and liabilities under the Project Agreement pursuant to Section 18.5 [Release of the Province on Assignment] of the Project Agreement, the Province or BCTFA, as the case may be, shall at the same time be released from all of its obligations and liabilities under this Agreement. The Principal Subcontractor **[and the Guarantor]** acknowledge that the Province and BCTFA shall not be required to obtain its **[their]** consent to any such assignment or transfer unless they are required to obtain the consent of the Primary Contractor thereto in accordance with Section 18.4(b) of the Project Agreement.

**PART 5.3 Assignment by Primary Contractor**

The Primary Contractor will not assign, transfer or otherwise dispose of any interest in this Agreement except in accordance with Part 18 [Assignment, Change in Ownership and Control and Subcontracting] of the Project Agreement.

**PART 6**

**GENERAL PROVISIONS**

**PART 6.1 Financial Administration Act**

The Principal Subcontractor **[, the Guarantor]** and the Primary Contractor acknowledge that they are aware of the provisions of the *Financial Administration Act* (British Columbia).

**PART 6.2 Primary Contractor Covenants**

- (a) The Primary Contractor acknowledges and agrees to the terms of 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. The Primary Contractor has no right to enforce any provision of this Agreement.
- (b) The Primary Contractor acknowledges and agrees that the Principal Subcontractor shall not be in breach of the Principal Subcontract **[and the Guarantor shall not be in breach of the Guarantee]** by reason of complying with its **[or their]** obligations hereunder.

**PART 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 of the Primary Contractor or the rights of the Province or the BCTFA under and as set forth in the Project Agreement.

**PART 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.

**PART 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 Subcontract **[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, the Primary Contractor, the Principal Subcontractor **[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.

**PART 6.6 Amendments**

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

**PART 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 transmission to the address or facsimile transmission number of each party set out below:

- (a) if to the Province, BCTFA or the Province's Representative:
- Attention: •  
Facsimile: •
- (b) if to the Primary Contractor or the Primary Contractor's Representative:
- **[NTD: Must be a BC Address.]**  
Attention: •  
Facsimile: •
- (c) if to the Principal Subcontractor:
- **[NTD: Must be a BC Address.]**  
Attention: •  
Facsimile: •
- (d) **[if to the Guarantor:**
- **[NTD: Must be a BC Address or provide agent for service.]**  
**Attention: •**  
**Facsimile: •]**

or to such other address or facsimile transmission number as any party may, from time to time, designate to the other parties 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 transmission and, if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission.

#### **PART 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 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.

#### **PART 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, assignments, waivers, licenses 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.

**PART 6.10 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 Principal Subcontractor [**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.

**PART 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 permitted successors and assigns.

**PART 6.12 Counterparts**

This Agreement may be executed in one or more counterparts. Any single counterpart or 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 faxed form, provided that any party providing its signature in faxed form shall promptly forward to each other party an original signed copy of this Agreement which was so faxed.

**PART 6.13 Joint and Several**

**[NTD: To be amended to reflect corporate structure of the relevant entities]**

- (a) If the Primary Contractor is a general partnership, the obligations and liabilities of the Primary Contractor under this Agreement shall be the obligations and liabilities of the Primary Contractor [**and each of the Partners**], jointly and severally with each other.
- (b) If the Principal Subcontractor is comprised of more than one legal entity, the obligations and liabilities of the Principal Subcontractor under this Agreement shall be the obligations and liabilities of each legal entity comprising the Principal Subcontractor, jointly and severally with each other such legal entity.
- (c) If the Principal Subcontractor is a general partnership, the obligations and liabilities of the Principal Subcontractor under this Agreement shall be the obligations and liabilities of the Principal Subcontractor and each of its partners, jointly and severally with each other.
- (d) [**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.**]

**EVERGREEN LINE RAPID TRANSIT PROJECT  
PROJECT AGREEMENT  
SCHEDULE 17: COLLATERAL AGREEMENTS**

*Execution*

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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

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

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

**[PRIMARY CONTRACTOR]**  
by its authorized signatories:

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

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

**STRICTLY CONFIDENTIAL**

**EVERGREEN LINE RAPID TRANSIT PROJECT  
PROJECT AGREEMENT  
SCHEDULE 17: COLLATERAL AGREEMENTS**

*Execution*

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**[PRINCIPAL SUBCONTRACTOR]**

by its authorized signatories:

Per:

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

Per:

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

**[[GUARANTOR]**

by its authorized signatories:

**Per:**

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

**Per:**

\_\_\_\_\_  
**Name:**  
**Title:]**

**STRICTLY CONFIDENTIAL**

**APPENDIX A  
DISPUTE RESOLUTION PROCEDURE**

1. Unless expressly provided otherwise in this Agreement, any dispute between or among the Province, BCTFA, the Primary Contractor, the Principal Subcontractor **[and the Guarantor]** with respect to the subject matters of this Agreement, 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 any disagreement between or among the Province, BCTFA, the Primary Contractor, the Principal Subcontractor **[and the Guarantor]** 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 the Dispute Resolution Procedure set out in this Appendix which shall be followed in the order set out below unless the parties all agree otherwise in writing.
2. The parties shall each designate a person in a senior capacity to act as a representative under this Dispute Resolution Procedure (the “**Senior Management Representative**”).
3. The Province, BCTFA, the Primary Contractor, the Principal Subcontractor **[and the Guarantor]** agree that, during the term of this Agreement, each of them shall:
  - (a) identify and address all disputes in a prompt and timely manner so as to facilitate the resolution of disputes as they arise;
  - (b) use all reasonable efforts to resolve any disputes arising between them by amicable negotiations; and
  - (c) provide good faith disclosure of all relevant facts, information and documents to facilitate the resolution of any dispute.
4. When a dispute occurs, any party may give written notice of the dispute (the “**Dispute Notice**”) to the other party or parties, and the parties shall use all reasonable efforts as identified in paragraph 3 of this Appendix to resolve the dispute.
5. If the relevant Senior Management Representatives fail to resolve the dispute within ten Business Days after the dispute has been referred to them, any party to the dispute (the “**Initiating Party**”) may commence arbitration proceedings in respect of such dispute by delivering a notice (an “**Arbitration Dispute Notice**”) to all other parties to the dispute (the “**Responding Party**”) requiring that the dispute be resolved by arbitration proceedings in accordance with this Appendix.
6. The Arbitration Dispute Notice shall identify the nature of the dispute that is to be the subject of the arbitration, and any amount involved and the remedy sought.
7. If a dispute is referred to arbitration pursuant to this Appendix, the *Commercial Arbitration Act* (British Columbia) and the BCICAC’s Domestic Commercial Arbitration Rules of Procedure shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Appendix or by agreement of the parties.
8. Within 15 Business Days following receipt of an Arbitration Dispute Notice by the Responding Party pursuant to paragraph 5 of this Appendix, the Initiating Party and the Responding Party shall appoint a single arbitrator acceptable to both of them.

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9. If the parties fail to appoint such a single arbitrator within the period of time and in the circumstances set out in paragraph 8 of this Appendix, either party may apply to the BCICAC to select an arbitrator, in which case the BCICAC shall appoint an arbitrator at the earliest opportunity in accordance with Article 14 of the BCICAC's Domestic Commercial Arbitration Rules of Procedure.
10. Unless the parties to the dispute otherwise agree, no person may be nominated or appointed to act as an arbitrator who is or at any time has been involved or interested in the conduct of:
  - (a) any of the Work on behalf of the Primary Contractor or any of its Subcontractors; or
  - (b) the Project on behalf of the Province.
11. The arbitrator shall have appropriate qualifications by profession or occupation to decide the matter in dispute.
12. Meetings and hearings of the arbitrator shall take place in Vancouver, British Columbia or in such other place as the parties to the dispute may agree. Subject to the foregoing, the arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and shall give the parties to the dispute adequate notice thereof. All meetings and hearings shall be in private unless the parties to the dispute otherwise agree, and each party may be represented at any meetings or hearings by legal counsel. Each party may examine and re-examine its witnesses and cross-examine those of the other party at the arbitration. There shall be no oral discovery unless otherwise ordered by the arbitrator.
13. All submissions prepared by a party in connection with any proceedings involving the arbitrator and all information, documents, notes and records prepared by the arbitrator and all decisions and determinations of the arbitrator shall be admissible in any other dispute resolution process, appeal or legal proceeding permitted in accordance with this Appendix. For greater certainty, nothing herein shall prevent the tendering of the same oral or written evidence before any other dispute resolution process, appeal or legal proceeding permitted in accordance with this Appendix and a proceeding arbitrated by an arbitrator. The arbitrator may testify in or in connection with any such dispute resolution process, appeal or legal proceeding.
14. The object of an arbitration hereunder is to ensure the just, expeditious and economical determination of the dispute. Without limiting the jurisdiction or powers of the arbitrator under the *Commercial Arbitration Act* (British Columbia), a submission to arbitration hereunder shall confer on the arbitrator the jurisdiction and power to:
  - (a) determine any question of law arising in the arbitration;
  - (b) determine any question as to the arbitrator's jurisdiction;
  - (c) determine any question of dishonesty arising in the dispute;
  - (d) order any party to the dispute to furnish further details of its case, in fact or in law to any other party to the dispute;
  - (e) proceed with the arbitration notwithstanding any failure or refusal of a party to comply with these provisions or with the arbitrator's orders or directions or to attend any meeting

or hearing, but only after giving such party reasonable notice that the arbitrator intends to do so;

- (f) receive and take into account such written or oral evidence tendered by the parties as the arbitrator determines is relevant, whether or not strictly admissible in law;
- (g) make one or more interim awards;
- (h) hold meetings and hearings and make a decision in British Columbia or elsewhere with the concurrence of the parties;
- (i) order the parties to produce to the arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the arbitrator determines to be relevant;
- (j) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties; and
- (k) include, as part of any award, the payment of interest at the Prime Rate from an appropriate date as determined by the arbitrator.

The jurisdiction and powers referred to in this paragraph shall be exercised at the discretion of the arbitrator subject only to applicable Laws and the provisions of this Agreement.

- 15. Subject to the provisions of the *Commercial Arbitration Act* (British Columbia), the arbitrator shall send a decision in writing to the parties to the dispute within 20 Business Days following the conclusion of all hearings referred to in paragraph 12 of this Appendix unless such period of time is extended for a fixed period by the arbitrator on written notice to each party because of illness or other cause beyond the arbitrator's control and, unless the parties to the dispute otherwise agree, shall state the reasons for the decision.
- 16. Subject to the rights of appeal that any party may have under the provisions of the *Commercial Arbitration Act* (British Columbia), the decision of the arbitrator shall be final and binding on the parties to the dispute.
- 17. Notwithstanding any provision of this Agreement, the Project Agreement, the Principal Subcontract **[or the Guarantee]**, each party to a dispute shall bear its own costs of the process for resolution of the dispute by arbitration (including all legal fees and expenses). The parties to a dispute (for this purpose, the Province and the BCTFA shall be regarded as a single party) shall share equally, and be responsible for their respective share of, all costs of the arbitrator as and when due.
- 18. Any party to a dispute may initiate a proceeding in a Court in the following circumstances:
  - (a) such party is appealing a decision of the arbitrator in accordance with the provisions of the *Commercial Arbitration Act* (British Columbia); or
  - (b) such party is initiating a proceeding in a Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary

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injunctive relief and restraining orders and the appointment of a receiver or receiver and manager.