

**SCHEDULE 19
COLLATERAL AGREEMENTS**

• COLLATERAL AGREEMENT

AMONG

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

- and -

BC TRANSPORTATION FINANCING AUTHORITY

- and -

[CONCESSIONAIRE]

- and -

[PRINCIPAL CONTRACTOR]

[- and -

[GUARANTOR]]

•, 20•

**SOUTH FRASER PERIMETER ROAD PROJECT
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Appendix A Dispute Resolution Procedure

**SOUTH FRASER PERIMETER ROAD PROJECT
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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:

[**CONCESSIONAIRE**]

(the “**Concessionaire**”)

AND:

[**PRINCIPAL CONTRACTOR**]

(the “**Principal Contractor**”)

[AND:

[**GUARANTOR**]

(the “**Guarantor**”)]

[**NTD: Adapt form for each Principal Contractor depending on 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 Contract.**]

WHEREAS:

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

B. The Concessionaire 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;

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

D. The Concession Agreement requires the Concessionaire 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) **“Concession Agreement”** means the agreement titled “Concession Agreement” dated • made between the Province, BCTFA and the Concessionaire, as amended, supplemented or replaced from time to time;
- (d) **“Default Event”** has the meaning given in Section 3.1 [Notice of Default by Principal Contractor] of this Agreement;
- (e) **“Default Notice”** has the meaning given in Section 3.1 [Notice of Default by Principal Contractor] of this Agreement;
- (f) **“Dispute Resolution Procedure”** means the procedure set out in Appendix A [Dispute Resolution Procedure] to this Agreement;
- (g) **[“Guarantee” means the guarantee dated • granted by the Guarantor in favour of the Concessionaire, 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) **“Performance Securities”** means the • provided or to be provided by the Principal Contractor to the Concessionaire pursuant to the terms of the Principal Contract, as amended, supplemented or replaced from time to time in accordance with this Agreement;

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- (k) **“Principal Contract”** means[, together,] the • agreement dated • between the Concessionaire and the Principal Contractor [and the interface agreement dated • among [the Concessionaire,] 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 the Concessionaire is not a party.]
- (l) **“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;
- (m) **“Step-In Notice”** has the meaning given in Section 3.4 [Step-In Rights] of this Agreement;
- (n) **“Substitute”** has the meaning given in Section 3.6(a) of this Agreement; and
- (o) other words and expressions with initial capital letters used in this Agreement which are defined in the Concession Agreement have the same meanings when used in this Agreement as are given to them in the Concession Agreement.

1.2 Interpretation

This Agreement shall be interpreted according to the provisions set out in Part 2 [Interpretation] of Schedule 1 to the Concession 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 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.

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1.5 No Fettering of Province's Rights and Province

- (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 Province of the Province or any minister, ministry, agency, board, commission, corporation or other entity of the Province (including, for greater certainty, the Minister, the Ministry, BCTFA and the Province) to:
 - (i) enact, amend, repeal or replace any enactment or regulation made under any enactment;
 - (ii) exercise or refrain from exercising any discretion conferred under Laws; or
 - (iii) administer, apply and enforce Laws;
- (b) Except as expressly provided for in this Agreement, **[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 or BCTFA or the Province's Representative under, pursuant to, or in respect of, the Concession 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 object, shall be for assessment by the Province or BCTFA or the Province's Representative of general compliance by the Concessionaire with its obligations under the Concession Agreement or the other Project Documents only; and
 - (ii) notwithstanding any other provisions of this Agreement, the Concession 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

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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 Concessionaire, the Principal Contractor[, **the Guarantor**] or any other person from any of its obligations under this Agreement, the Concession 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 by the Province or BCTFA of any duty or liability owed by the Concessionaire, the Principal Contractor[, **the Guarantor**] or any other person to the Province, or of any indemnity given by the Concessionaire under the Concession 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 any requirement, liability, covenant, agreement or obligation on the Province or BCTFA except to the extent expressly set out in the Concession 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 or other permission of the Province or BCTFA or the Province's Representative is expressly required from the Province or BCTFA or the Province's Representative under the Concession Agreement or any of the other Province Project Documents in order for any specific act or conduct of the Concessionaire to be in compliance with (or not in breach of) any provision of the Concession Agreement or any of the other Province Project Documents, and if such consent, approval, acceptance or other permission is given by the Province or BCTFA or the Province's Representative (as the case may be) in any particular circumstance, the Concessionaire shall be relieved of the obligation under the Concession Agreement or the other Province Project Documents to obtain the specific consent, approval, acceptance or other permission given, but only for the purposes and in the particular circumstances in which it was given and to which it applied.

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**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 Concession 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) The Concessionaire 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 Control and Subcontracting] of the Concession Agreement.
- (b) **[The Concessionaire, 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 Control and Subcontracting] of the Concession 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; and
- (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,

provided that neither the Province nor BCTFA shall be entitled to exercise against the Principal Contractor any rights or remedies to which it becomes entitled as a result of a breach of either of the covenants set out in Section 2.3(a) or 2.3(b) of this Schedule 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).

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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 the Concessionaire under the Principal Contract had the Principal Contract continued with the Concessionaire 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 the Concessionaire under the Guarantee, had the Guarantee continued with the Concessionaire 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 in the exercise by the Province or BCTFA of its step-in rights under this Agreement.

2.5 Representations and Warranties of the Province and BCTFA

- (a) The Province represents and warrants to the Principal Contractor [**and the Guarantor**], and acknowledges that the Principal Contractor [**and the Guarantor**] is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:
 - (i) the Province has the necessary power and capacity to execute and deliver this Agreement;

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- (ii) the necessary authority has been conferred on the Minister of Transportation and Infrastructure to, on behalf of the Province, execute and deliver this Agreement; and
 - (iii) this Agreement has been duly authorized, executed and delivered on behalf of the Province.
- (b) BCTFA represents and warrants to the Principal Contractor [**and the Guarantor**], and acknowledges that the Principal Contractor [**and the Guarantor**] is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:
- (i) BCTFA has the necessary power and capacity to execute and deliver this Agreement;
 - (ii) the necessary authority has been conferred on BCTFA to execute and deliver this Agreement;
 - (iii) the necessary corporate action has been taken by BCTFA to authorize the execution and delivery by BCTFA of this Agreement; and
 - (iv) this Agreement has been duly authorized, executed and delivered on behalf of BCTFA.

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

3.1 Notice of Default by Principal Contractor

If the Principal Contractor gives the Concessionaire a notice (a “**Default Notice**”) of any breach, non-performance or default (each, a “**Default Event**”) under the Principal Contract that may give 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 the Concessionaire;
- (c) [**temporarily suspend the Principal Contractor’s performance thereunder,**] [NTD: **Will only be included in the Collateral Agreement for the Design-Build Contract.**];
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.

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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 the Concessionaire 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 the Concessionaire to the Principal Contractor, and any other unperformed liabilities of the Concessionaire, 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 Concessionaire] of the Lenders' Remedies Agreement and any collateral agreement between the Principal Contractor and the Senior Lenders or the Agent on behalf of the Senior Lenders.

[NTD: The following provision will only be included in the Collateral Agreement for the Design-Build Contract.]

3.3 [No Suspension of Performance

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**

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[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, 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 five Business Days of receipt of confirmation from the Principal Contractor 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 Contractor to pay the Principal Contractor in accordance with the Principal Contract for work performed 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, 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 Concessionaire] 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

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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 Concession Agreement, to then terminate the Concession Agreement,

deliver a notice (a "**Step-In Notice**") to the Principal Contractor [**and the Guarantor**] electing to replace the Concessionaire 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 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 Concession Agreement as referred to in Section 3.4(b) of this Agreement.

3.6 Designation of Substitute

- (a) The Province's Representative may designate, in a Step-In Notice under Section 3.4 [Step-In Rights] of this Agreement or by subsequent notice, a third party (the "**Substitute**") 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;

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- (ii) a Compliant Bidder in the circumstances of a New Concession Agreement; or
- (iii) any person who has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of the Concessionaire 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 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 the Concessionaire all of the Concessionaire's rights under the Principal Contract, including all rights and benefits available to the Concessionaire 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 Concessionaire only those liabilities of the Concessionaire 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), 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,

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and the Concessionaire, 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 the Concessionaire 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, 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 the Concessionaire 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,**

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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 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 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.

3.9 Payment by Concessionaire and Rights of Province

- (a) The Concessionaire 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) (collectively, the **"Principal Contractor Payments"**); and
- (b) any Principal Contractor Payments shall constitute amounts due and payable by the Concessionaire to the Province under the Concession Agreement and the Province and BCTFA shall have all the same rights and remedies under the Concession Agreement in respect of payment or non-payment by the Concessionaire of the Principal Contractor Payments as the Province or BCTFA would have for any payment or non-payment by the Concessionaire of any other amounts that are due and payable by the Concessionaire to the Province or BCTFA under the Concession Agreement, including the Province's and BCTFA's right of set-off in accordance with the provisions of the Concession Agreement including Section 10.4 [Province's Right of Set Off] of the Concession Agreement and Section 7.4 [Rights of Set-Off] of Schedule 13 to the Concession Agreement.

**PART 4
DATA AND INFORMATION**

4.1 License to Principal Contractor Intellectual Property

The Principal Contractor hereby grants to each of the Province and BCTFA a Complete License to use, both during and after the Term, all and any Project Intellectual Property which has been or are hereafter provided by the Principal Contractor in the course of performing the works and services provided for in the Principal Contract (collectively, the **"Principal Contractor Intellectual Property"**)

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for any purpose (including the carrying out of any statutory, public or other duties or functions) in connection with the Concession Agreement, this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them, provided that:

- (a) with respect to any Principal Contractor Intellectual Property arising after the Effective Date, such Complete License shall take effect immediately upon the coming into existence of such Principal Contractor Intellectual Property;
- (b) to the extent that any of the Principal Contractor Intellectual Property is generated by or maintained on a computer or in any other machine readable format, the Concessionaire shall obtain for the benefit of the Province and BCTFA, at no charge to the Province or BCTFA, the grant of a license or sub-license, as applicable, for and the supply of any relevant software or database (on equivalent terms to the equivalent license or sub-license granted to the Principal Contractor) to enable the Province, BCTFA and their employees, agents, contractors, subcontractors and other nominees to access and otherwise use, both during and after the Term, such Principal Contractor Intellectual Property for any such purpose; and
- (c) where any Principal Contractor Intellectual Property is vested in any third party, the Principal Contractor shall grant or cause the grant of a Complete License to each of the Province and BCTFA to use such Principal Contractor Intellectual Property for any purpose (including the carrying out of any statutory, public or other duties or functions) in connection with the Concession Agreement, this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them.

4.2 Access to Principal Contractor Intellectual Property

The Principal Contractor shall, or shall cause its agents, employees and Subcontractors, to make available to the Province's Representative, without charge and in paper based or machine readable form as required by the Province's Representative, all Principal Contractor Intellectual Property which might reasonably be required by the Province and/or BCTFA whether during or after the Term for the purposes of exercising rights or carrying out duties under this Agreement or the Concession Agreement, or carrying out any statutory, public or other duty or function in relation to the Concession Highway.

4.3 Representation and Warranty

The Principal Contractor represents and warrants to and covenants with the Province and BCTFA that each item of Principal Contractor Intellectual Property is its own original work or, if any item of Principal Contractor Intellectual Property is not its own original work, the Principal Contractor has obtained, or prior to such item being acquired or brought into existence in any manner whatsoever shall have obtained, all rights necessary in order to enable:

- (a) such item to be so acquired or brought into existence and to be used for the purposes of the Project by the Principal Contractor, the Concessionaire, the other Principal Contractors as defined in the Concession Agreement, and each of their respective Subcontractors; and

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- (b) the Principal Contractor to grant the Complete License granted in Section 4.1 [License to Principal Contractor Intellectual Property] of this Agreement and to comply with all of its obligations under this Part,

without infringing any third party's Intellectual Property Rights.

4.4 Indemnity

The Principal Contractor 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:

- (a) the use or disclosure of any Principal Contractor Intellectual Property, including any Principal Contractor Intellectual Property vested in a third party in the event that the Principal Contractor is unable to grant or cause the grant of a Complete License to such Principal Contractor Intellectual Property pursuant to Section 4.1(c) of this Agreement; and
- (b) allegations of or findings of infringement of Intellectual Property Rights of other persons, including breach of confidence, breach of moral rights, unauthorized use by the Province, BCTFA or any of the Province Indemnified Persons, or failure to obtain waivers of moral rights, in respect of any Principal Contractor Intellectual Property.

4.5 Disclaimer

- (a) Neither the Province nor BCTFA gives or has given any representation, warranty or undertaking to the Principal Contractor **[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 the date of this Agreement) relevant or material to the Project, or to any obligations undertaken by the Principal Contractor under the Principal Contract **[or by the Guarantor under the Guarantee]**.
- (b) Neither the Province nor BCTFA shall be liable to the Principal Contractor **[or the Guarantor]** in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Concessionaire, the Principal Contractor **[or the Guarantor]** any information, documents or data, nor shall they be liable to keep the Disclosed Data up to date, nor to inform the Concessionaire, the Principal Contractor **[or the Guarantor]** (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
- (c) Neither the Province nor BCTFA shall have any liability to the Principal Contractor **[or the Guarantor]** (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Province or BCTFA or any of their respective employees, contractors or agents) 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.

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4.6 Confidentiality

The Principal Contractor [**and the Guarantor**] shall [**each**] be bound to comply with obligations identical to the confidentiality obligations that the Concessionaire is obligated to comply with under the Concession 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.

4.7 Survival of Obligations

The obligations under Sections 4.1 [License to Principal Contractor Intellectual Property] and 4.6 [Confidentiality] of this Agreement shall survive and shall continue in force and effect after the termination or expiry of this Agreement, the Principal Contract [**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 the carrying out of a submission made under Section 16.10 [Restriction on Changes to Principal Contracts] of the Concession Agreement to which there has been no objection by the Province's Representative in accordance with the Review Procedure.

5.2 Assignment by Province and BCTFA

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 Concession Agreement concurrently with the assignment of the Concession Agreement to such assignee in accordance with Section 16.4 [Assignment by the Province] of the Concession Agreement and, in circumstances where the Province and/or BCTFA is released from all of its obligations and liabilities under the Concession Agreement pursuant to Section 16.5 [Release of the Province on Assignment] of the Concession 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.

5.3 Assignment by Concessionaire

The Concessionaire may only assign, transfer or otherwise dispose of any interest in this Agreement in accordance with Part 16 [Assignment, Change in Control and Subcontracting] of the Concession Agreement.

**PART 6
GENERAL PROVISIONS**

6.1 Financial Administration Act

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

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6.2 Concessionaire Covenants

- (a) The Concessionaire acknowledges and consents to the arrangements set out in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement. The Concessionaire has no right to enforce any provision of this Agreement.
- (b) The Concessionaire 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 Concession Agreement

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

6.4 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Agreement and the Concession Agreement, the provisions of the Concession 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 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 Concessionaire, 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 Concession Agreement.

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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 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 Concessionaire or the Concessionaire's Representative:

- **[NTD: Must be a BC Address.]**
- Attention: •
- Facsimile: •

(c) if to the Principal Contractor:

- **[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

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hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission.

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 under or enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver shall only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.

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 (including certificates, declarations, affidavits, reports and opinions) 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.

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 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 permitted successors and assigns.

6.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

6.13 Joint and Several

- (a) If the Concessionaire is a general partnership, the obligations and liabilities of the Concessionaire under this Agreement shall be the obligations and liabilities of the Concessionaire and each of the Partners, jointly and severally with each other.
- (b) 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

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liabilities of each legal entity comprising the Principal Contractor, jointly and severally with each other such legal entity.

- (c) 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.
- (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.] [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

BC TRANSPORTATION FINANCING AUTHORITY
by its authorized signatory:

Per:

 Name:
 Title:

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[CONCESSIONAIRE]

by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

[PRINCIPAL CONTRACTOR]

by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

[[GUARANTOR]

by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:]

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**APPENDIX A
DISPUTE RESOLUTION PROCEDURE**

1. Unless expressly provided otherwise in this Agreement, any dispute between or among the Province, BCTFA, the Concessionaire, the Principal Contractor [**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 Concessionaire, the Principal Contractor [**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 Concessionaire, the Principal Contractor [**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 may initiate the appointment of a referee (the “**Referee**”) who shall render a non-binding decision with respect to the dispute.
6. The Referee shall be selected as follows:
 - (a) each party shall submit to the other party or parties to the dispute in writing the names of three acceptable candidates for Referee who are immediately available to perform the role of Referee in Vancouver;
 - (b) the Referee may be any person who the parties agree upon as Referee; and
 - (c) if the parties have not agreed upon a Referee within three Business Days of a submission of names as provided above, or if a party does not, within a reasonable time, submit names as contemplated in paragraph 6(a) of this Appendix, then the Referee shall be selected pursuant to the Rules of the British Columbia International Commercial Arbitration Centre.

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Appendix A: Dispute Resolution Procedure**

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7. Upon selection of the Referee, the parties to the dispute shall enter into an agreement for services with the Referee and the Referee's fees, disbursements and other costs, as agreed between the parties and the Referee, shall be shared equally by the parties to the dispute.
8. Once a Referee has been appointed to review a dispute then, subject to the timely availability of that Referee and the willingness of that Referee to do so, and unless a party to the dispute disagrees, that Referee shall be the Referee to review all other disputes that may arise between or among the Province, BCTFA, the Concessionaire, the Principal Contractor [**and the Guarantor**] under this Agreement.
9. Within seven Business Days after the agreement for services referred to in paragraph 7 of this Appendix has been entered into by all parties thereto, the parties to the dispute shall each submit to the Referee and the other party or parties a complete list of the issues in dispute, the remedies sought, and a list of documents and any other information they believe relevant to the dispute.
10. The Referee may in the course of the investigation:
 - (a) require any party to supply or prepare for examination by the Referee and the other party or parties any document or other information the Referee considers necessary;
 - (b) convene meetings of the parties to discuss the issues in dispute in the presence of the Referee; and
 - (c) take evidence from such witnesses and experts as the Referee may deem appropriate, in the presence of the parties to the dispute.
11. No party shall unduly delay or impede the Referee in completing the investigation.
12. Not later than 14 Business Days after the dispute has been referred to the Referee pursuant to paragraph 9 of this Appendix, or such longer period as the parties may agree, the Referee must provide a written report setting out, and giving reasons for, the Referee's decision.
13. If any party disputes the Referee's decision, the disputing party shall give written notice (a "**Referee Dispute Notice**") to the other party or parties within ten Business Days of receipt of the Referee's report setting out fully the reasons for disagreeing with the Referee's decision.
14. After delivery of a Referee Dispute Notice, the dispute shall be determined by arbitration if the parties to the dispute agree, or failing agreement, in a court of competent jurisdiction in Vancouver, British Columbia.
15. In the event the parties to the dispute agree to arbitration, the arbitration shall:
 - (a) be determined by a single arbitrator;
 - (b) be governed by the Rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator shall be agreed upon by the parties to the dispute and, failing agreement between the parties, shall be appointed by a judge of the Supreme Court of British Columbia in Vancouver, British Columbia on application by any party to the dispute; and

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Appendix A: Dispute Resolution Procedure**

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- (c) shall take place in Vancouver, British Columbia and be governed by the laws of British Columbia.
16. If no party disputes the Referee's decision within the time provided for in paragraph 13 of this Appendix, the Referee's decision shall become binding on the parties.
17. The Referee's decision shall be admissible in any arbitration or court proceedings in connection with the dispute.
18. Responsibility for any arbitration costs shall be determined by the arbitrator.
19. Any of the times periods specified in this Appendix may be varied, on a dispute by dispute basis, by agreement between the parties to the dispute.
20. No party shall be precluded from initiating a proceeding in a court of competent jurisdiction 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 without limitation temporary and preliminary injunctive relief and restraining orders.
21. At all times, notwithstanding the existence of any dispute, but subject to the rights of the Province under the Concession Agreement to remedy a default of the Concessionaire thereunder, or to stop or suspend the progress of any or all of the Project Work, or to suspend the rights of the Concessionaire under the Concession Agreement or the other Province Project Documents, the parties shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.
22. A Referee may, at any time, be discharged and replaced by another Referee by agreement of the parties to the dispute.