
SCHEDULE 22

OPERATOR COLLATERAL AGREEMENT

THIS AGREEMENT is made as of the ● day of ●, 2005

AMONG

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

(the “Province”);

AND

BC TRANSPORTATION FINANCING AUTHORITY,
a corporation continued under the *Transportation Act*,
S.B.C. 2004, c. 44

(“BCTFA”);

AND

SNC-LAVALIN PROFAC SERVICES INC., a
corporation incorporated under the laws of Canada

(the “Operator”);

AND

SNC-LAVALIN PROFAC INC., a corporation registered
under the laws of Canada

(the “Guarantor”);

AND

**OKANAGAN LAKE CONCESSION LIMITED
PARTNERSHIP** (reg. no. 05-0399237), a limited
partnership registered under the laws of British Columbia

(the “Concessionaire”).

WHEREAS:

- A. The Province, BCTFA and the Concessionaire have entered into the Concession Agreement pursuant to which the Concessionaire will carry out the Project described therein.
- B. The Concessionaire and the Operator have entered into the Operating and Maintenance Contract pursuant to which the Operator has agreed to perform work and provide services in connection with the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas.
- C. The obligations of the Operator under the Operating and Maintenance Contract have been guaranteed by the Guarantor pursuant to the Operating and Maintenance Contract Guarantee.
- D. The Operator has provided the Concessionaire with the Operating and Maintenance Contract Performance Securities in connection with the Operating and Maintenance Contract.
- E. The Concession Agreement requires the Concessionaire to enter into, and to cause the Operator and the Guarantor to enter into, this Agreement with the Province and BCTFA.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. DEFINITIONS

In this Agreement unless the context otherwise requires:

- (a) “Agreement” means this Agreement;
- (b) “Concession Agreement” means the agreement entitled “Okanagan Lake New Crossing Project Concession Agreement” made between the Province, BCTFA and the Concessionaire and dated as of the ● day of ●, 2005;
- (c) “Default Notice” has the meaning given in Section 5(a);

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- (d) “Operating and Maintenance Contract Guarantee” means the guarantee provided or to be provided by the Guarantor to the Concessionaire to guarantee performance by the Operator of the terms of the Operating and Maintenance Contract.
 - (e) “Operating and Maintenance Contract Performance Securities” means the Performance Securities provided or to be provided by the Operator pursuant to the terms of the Operating and Maintenance Contract.
 - (f) “Operator's Data” has the meaning given in Section 4(a);
 - (g) “Party” means any of the Province, BCTFA, the Operator, the Guarantor or the Concessionaire, and “Parties” means the Province, BCTFA, the Operator, the Guarantor and the Concessionaire;
 - (h) “Representative” has the meaning given in the Direct Agreement;
 - (i) “Step-In Notice” has the meaning given in Section 7(a);
 - (j) “Substitute” has the meaning given in Section 7(a); and
 - (k) 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.

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise requires:

- (a) the headings and sub-headings and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (b) the words “herein”, “hereto” and “hereunder” and other words of like import refer to this Agreement as a whole and not to the particular provision in which such word may be used;
- (c) all references to Sections are references to Sections of this Agreement;
- (d) words importing the singular include the plural and vice versa;

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- (e) words importing a particular gender include all genders;
 - (f) all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement or the Concession Agreement concerning such agreement, document, standard, principle or other instrument or amendments thereto) a reference to that agreement, document, standard, principle or other instrument as amended, supplemented, substituted, novated or assigned;
 - (g) “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
 - (h) whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
 - (i) the words “includes” or “including” are to be construed as being without limitation;
 - (j) general words are not given a restrictive meaning;
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
 - (k) if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;
 - (l) the words of this Agreement are to be given their natural meaning;
 - (m) the Parties have had the opportunity to take legal advice on this Agreement and no provision is, therefore, to be construed *contra proferentem*; and
 - (n) no provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and Regulations and should not be interpreted in a manner as to result in any derogation, inconsistency or conflict and if any such

provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws and Regulations, the applicable Laws and Regulations will prevail and such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be, and if any such provision is found by a court of competent jurisdiction to derogate from any Laws and Regulations, then such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate) to the extent of the derogation and for purposes of this Section 2(n), the following will be excluded from the definition of the defined phrase “Laws and Regulations”: “and the law of equity”, “ordinances” and “codes (including design and construction codes)”.

3. AGREEMENTS

- (a) The Concessionaire and the Operator will not terminate, make or agree to any material amendment to or material variation of, or in any material respect depart from, or waive or fail to enforce any rights they may have under, or enter into any agreement or document which would materially affect the interpretation or application of, the provisions of the Operating and Maintenance Contract or any of the Operating and Maintenance Contract Performance Securities and the Operating and Maintenance Contract Guarantee except in compliance with the provisions of Section 2.3.2 of the Concession Agreement. The Concessionaire and the Operator will provide to the Province a certified true copy of all documents entered into in accordance with the foregoing.
- (b) The Concessionaire, the Guarantor and the Operator will not terminate, make or agree to any material amendment to or material variation of, or in any material respect depart from or waive or fail to enforce any rights they may have under, or enter into any agreement or document which would materially affect the interpretation or application of, the terms of the Operating and Maintenance Contract Guarantee except in compliance with the provisions of Section 2.3.2 of the Concession Agreement. The Concessionaire and the Operator will provide to the Province a certified true copy of all documents entered into in accordance with the foregoing.
- (c) Each of the Parties acknowledges having received and reviewed a copy of the Concession Agreement, the Operating and Maintenance Contract, each of the Operating and Maintenance Contract Performance Securities and the Operating and Maintenance Contract Guarantee and acknowledges the terms thereof.

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- (d) If the Operator gives the Concessionaire any notice of any default(s) under the Operating and Maintenance Contract that may give the Operator a right to terminate the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder, then the Operator will concurrently provide the Province and BCTFA with a copy of such notice and set out in reasonable detail the default(s).

4. OPERATOR'S DATA

- (a) In relation to all drawings, details, plans, specifications, reports and other documents and data of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Operator in the course of carrying out and performing its obligations under the Operating and Maintenance Contract (including any and all design data and construction data now or hereafter owned by the Operator) (the "Operator's Data"), the Operator hereby grants to the Province and BCTFA a perpetual, unrestricted, transferable and assignable, non-exclusive, worldwide, irrevocable and non-terminable royalty-free licence (which term as used in this Section 4 includes, where applicable, a sub-licence) (carrying the right to grant sub-licences) to use and reproduce all or any of the Operator's Data for any purpose (whether during or after the Contract Period) relating to the design, construction, completion, commissioning or testing of the Works, the design and completion of the Decommissioning, the operation, maintenance, rehabilitation or improvement of the Project Facilities, the Site and the Adjacent Areas or the conduct of any other Undertakings or the carrying out of any statutory or other duties or functions in respect of the Project Facilities, the Site and the Adjacent Areas, including the right to make any alterations, adaptations or additions to any Operator's Data, and the Operator will have no liability for such alterations, adaptations or additions to the Operator's Data.
- (b) With respect to Operator's Data arising during the Contract Period, the licence granted pursuant to Section 4(a) will take effect immediately upon the coming into existence of such Operator's Data.
- (c) The Operator agrees on reasonable request at any time and following reasonable prior written notice to give the Province and BCTFA or any person(s) authorized by either of them access to the Operator's Data and to provide copies (including copy negatives and CAD disks) thereof at the Province's or BCTFA's (as the case may be) expense.

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- (d) The Operator represents and warrants to and covenants with the Province and BCTFA that each item of Operator's Data is its own original work or, if any item of Operator's Data is not original, the Operator has obtained, or prior to such item being acquired or brought into existence in any manner whatsoever will have obtained, all rights necessary in order to enable:
- (i) such item to be so acquired or brought into existence and to be used for the purposes of the Project by the Operator and the Concessionaire and their respective contractors or subcontractors of any tier; and
 - (ii) the Operator to grant the licence granted in Section 4(a) and to comply with all of its obligations under this Section 4,
- and that in any event no such item infringes or will infringe any third party's copyright, moral rights, design rights, trade mark or other intellectual property rights.
- (e) The Operator undertakes at the request of the Province or BCTFA to execute and do all acts which may be necessary to bring into effect or confirm the terms of any licence or sub-licence contained or referred to in Section 4(a).
- (f) The provisions of this Section 4 will survive the expiry or termination of this Agreement for any reason.

5. NO TERMINATION BY THE OPERATOR WITHOUT DEFAULT NOTICE

- (a) The Operator will not exercise any right it may have to terminate the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder unless:
- (i) the Operator first delivers a written notice (a "Default Notice") to the Province and BCTFA setting out in reasonable detail the default(s) on which the Operator intends to rely in terminating the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder;
 - (ii) within 90 days of the Province and BCTFA receiving the Default Notice:
 - (A) the default(s) on which the Operator intends to rely in terminating the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder have not been remedied; and

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- (B) the Operator has not received a Step-In Notice from the Province or BCTFA; and
- (iii) the Senior Funders have not exercised their step-in rights or novation rights under the Direct Agreement.
- (b) If the Operator delivers a Default Notice to the Province and BCTFA pursuant to Section 5(a)(i), the Province will pay the Operator in accordance with and at the times specified in the Operating and Maintenance Contract for work performed by the Operator during the period commencing on the date when the Operator, but for the provisions of Section 5(a) above, would have been entitled to suspend its performance under or terminate the Operating and Maintenance Contract as a consequence of the default(s) specified in the Default Notice and ending on the earliest to occur of:
- (i) the date upon which the Province gives the Operator a written notice confirming that neither the Province nor BCTFA are exercising their step-in rights under Section 7(a);
- (ii) the date upon which a Step-In Notice is given by the Province or BCTFA under Section 7(a) (in which event the provisions of Section 7(b) will apply in accordance with its terms); and
- (iii) the date upon which the Senior Funders (or the Agent or any other Representative) exercise any right to step-in and assume any of the Concessionaire's rights and/or obligations under the Operating and Maintenance Contract or to transfer, novate or assign the Operating and Maintenance Contract; and
- (iv) the expiry of the 90-day period referred to in Section 5(a).
- (c) For greater certainty, the Province will not be liable pursuant to the provisions of Section 5(b) for payment of any amounts owing by the Concessionaire to the Operator under the Operating and Maintenance Contract for work performed by the Operator prior to the time at which the Operator, but for the provisions of Section 5(a) above, would have been entitled to suspend its performance under or terminate the Operating and Maintenance Contract as a consequence of the default(s) specified in the Default Notice.

6. DUTY OF CARE, REPRESENTATIONS AND WARRANTIES

The Operator represents and warrants to and covenants with the Province and BCTFA on behalf of itself and its subcontractors of any tier that:

- (a) it has performed and will continue to perform all of the terms of the Operating and Maintenance Contract to be performed on the Operator's part and that it has carried out, supplied and performed and will carry out, supply and perform the works and services it is to carry out, supply and perform under the Operating and Maintenance Contract in a good and workmanlike manner using suitable goods, materials and methods and in accordance with the Operating and Maintenance Contract;
- (b) it has provided and will maintain in full force and effect all of the Operating and Maintenance Contract Performance Securities in accordance with the terms of the Operating and Maintenance Contract; and
- (c) it has exercised and will continue to exercise all the reasonable professional skill, care and diligence in carrying out, providing and performing the works and services under the Operating and Maintenance Contract to be expected of a properly qualified contractor experienced in carrying out, providing and performing works and services of similar scope, size, type and complexity including, without limiting the generality of the foregoing, the selection of goods and materials, any design and the satisfaction of the performance specifications and requirements contained in the Operating and Maintenance Contract and the Technical Requirements.

The Operator will not have any liability for delay in the completion of the work to be completed under the Operating and Maintenance Contract to the extent that the delay results from the exercise by the Province or BCTFA of its Step-In Rights under this Agreement; provided, for greater certainty and without prejudice to any rights with respect to any continuing delay in the performance of the Operating and Maintenance Contract, that the foregoing will not relieve the Operator from any liability for delay under the Operating and Maintenance Contract which arises after the exercise by the Province or BCTFA of its Step-In Rights under this Agreement or from any other cause.

Notwithstanding the foregoing, the Operator's representation, warranty and covenant in this Section 6 shall not come into effect in any respect until the Province and/or BCTFA exercises its Step-In Rights under Section 7 of this Agreement.

7. **STEP-IN RIGHTS**

- (a) Subject to the provisions of the Direct Agreement including without limitation Section 3.5 thereof, the Province or BCTFA may at any time:
- (i) within 90 days of the Province and BCTFA receiving a Default Notice unless prior to expiry of such 90-day period the default(s) on which the Operator intends to rely in terminating the Operating and Maintenance Contract or treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder have been remedied; or
 - (ii) if the Province has a right to terminate the Concession Agreement, deliver a notice (a "Step-In Notice") electing to replace the Concessionaire under the Operating and Maintenance Contract either with the Province or BCTFA or a third party designated by the Province or BCTFA in the Step-In Notice (the "Substitute"). In any case where the Province or BCTFA elects in a Step-In Notice to replace the Concessionaire under the Operating and Maintenance Contract with the Province or BCTFA, the Province may by subsequent notice (a "Substitute Designation Notice") designate a third party to replace the Province or BCTFA (as the case may be) under the Operating and Maintenance Contract in which event the third party so designated will succeed to all rights and obligations of the Province or BCTFA (as the case may be) under the Operating and Maintenance Contract and other agreements and documents referred to in Section 7(b) and the Province or BCTFA (as the case may be) will be released from all obligations under the Operating and Maintenance Contract and such other agreements and documents. A third party designated by the Province or BCTFA in a Step-In Notice or Substitute Designation Notice as aforesaid is referred to in this Agreement as a "Substitute".
- (b) Subject to Section 7(d), upon receipt by the Operator of a Step-In Notice:
- (i) the Concessionaire and the Operator will be deemed to be released from their obligations under the Operating and Maintenance Contract to each other (except with respect to any and all indemnities from the Concessionaire in favour of the Operator and from the Operator in favour of the Concessionaire), and the Province, BCTFA or the Substitute, as applicable, and the Operator will be deemed to assume those same obligations towards each other (except with respect to any and all indemnities from the Concessionaire in favour of the Operator);

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- (ii) the Operating and Maintenance Contract Guarantee shall be assigned by the Concessionaire to the Province, BCTFA or the Substitute and the Guarantor hereby confirms that it consents to such assignment and agrees to continue to be bound by the terms of the Operating and Maintenance Contract Guarantee, including any limitation of liability thereunder. If the Province, BCTFA or any Substitute, acting reasonably, requires the Operator to enter into a novation of the Operating and Maintenance Contract Guarantee or to grant a new guarantee in favour of the Concessionaire, the Guarantor will do so, provided that the guarantee so given will be no more onerous than the Operating and Maintenance Contract Guarantee and provided further that the grant thereof shall be conditional on the release and discharge to the Guarantor of any currently outstanding Operating and Maintenance Contract Guarantee provided by it;
- (iii) at the Province's or BCTFA's request, the Guarantor will to enter into, and the Province or BCTFA will or will cause the Substitute, as applicable, to enter into all such agreements or other documents necessary to give effect to the provisions of this Section 7(b), including assignment and necessary consents to assignment of the Operating and Maintenance Contract Guarantee to the Province, BCTFA or the Substitute, as applicable, or replacement guarantee from the Guarantor in favour of the Province, BCTFA or the Substitute, as applicable, on the same terms as the Operating and Maintenance Contract Guarantee (which assignments or replacement performance securities, for greater certainty, will be consistent with the provisions of paragraph 7(b)(ii)) and, in the case of the issuance of replacement guarantee as aforesaid, the original Operating and Maintenance Contract Guarantee will be cancelled and provided that any resulting guarantee so given will be no more onerous than the Operating and Maintenance Contract Guarantees;
- (iv) the rights of the Concessionaire against the Operator under the Operating and Maintenance Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Concessionaire in favour of the Operator and from the Operator in favour of the Concessionaire), and the Province, BCTFA or the Substitute, as applicable, and the Operator will be deemed to acquire those same rights against each other (except with respect to any and all indemnities from the Concessionaire in favour of the Operator);

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- (v) the rights and benefits previously available to the Concessionaire under the Operating and Maintenance Contract Performance Securities (without prejudice to claims by the Concessionaire under the Operating and Maintenance Contract Performance Securities arising in respect of matters occurring prior to the date of receipt of the Step-In Notice by the Operator) will be transferred and assigned to the Province, BCTFA or the Substitute, as applicable (provided, for greater certainty, that any limitations on the maximum liability of the issuers of the Operating and Maintenance Contract Performance Securities will continue in effect);
 - (vi) at the Province's or BCTFA's request, the Operator will enter into, and the Province or BCTFA will or will cause the Substitute, as applicable, to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the provisions of this Section 7(b), including agreements between the Province, BCTFA or the Substitute, as applicable, and the Operator on substantially the same terms as the Operating and Maintenance Contract (except with respect to necessary ministerial changes); and
 - (vii) at the Province's or BCTFA's request, the Operator will and will cause the issuers of the Operating and Maintenance Contract Performance Securities to enter into, and the Province or BCTFA will or will cause the Substitute, as applicable, to enter into all such agreements or other documents necessary to give effect to the provisions of this Section 7(b), including assignments and necessary consents to assignments of the Operating and Maintenance Contract Performance Securities to the Province, BCTFA or the Substitute, as applicable, or replacement performance securities from the issuers of the Operating and Maintenance Contract Performance Securities in favour of the Province, BCTFA or the Substitute, as applicable, on the same terms as the Operating and Maintenance Contract Performance Securities (which assignments or replacement performance securities, for greater certainty, will be consistent with the provisions of paragraph 7(b)(v) above) and, in the case of the issuance of replacement performance securities as aforesaid, the original Operating and Maintenance Contract Performance Securities (provided, for greater certainty, that any limitations on the maximum liability of the Guarantor under the Operating and Maintenance Contract Guarantee will continue in effect) (except with respect to claims by the Concessionaire thereunder in respect of matters occurring prior to the date of receipt of the Step-In Notice by the Operator) will be cancelled.

In the event the Province or BCTFA causes a Substitute to enter into the agreements and other documents as are necessary to give effect to the provisions of this Section 7(b), the Operator will not have any right to approve the Substitute where such Substitute is any of the following:

- (viii) any Ministry, office, instrumentality or agency of the Province;
- (ix) any person whose obligations under such agreements or other documents are guaranteed by the Province or any Ministry, office, instrumentality or agency of the Province; or
- (x) a Qualifying Bidder as defined in the Concession Agreement in circumstances of an assignment, transfer or novation of the Concession Agreement.

Otherwise, the Substitute shall be subject to the approval of the Operator, such approval not to be unreasonably withheld or delayed and the Province or BCTFA will provide such information relating to any proposed Substitute not falling within Sections 7(b)(viii) (ix) and (x) as the Operator may reasonably request to the extent such information is available to the Province or BCTFA.

- (c) Subject to Section 7(d), each of the Concessionaire, the Operator, the Province, BCTFA and any Substitute will each at their own cost (but without being liable to contribute to the costs of the others) cooperate fully with each other in order to achieve a smooth, efficient and orderly transfer of the Operating and Maintenance Contract, the Operating and Maintenance Contract Guarantee and the Operating and Maintenance Contract Performance Securities to the Province, BCTFA or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Operating and Maintenance Contract, ongoing supervisory activities and scheduling. The Province, BCTFA and any Substitute and the Guarantor will at its own cost (but without being liable to contribute to the costs of the others) cooperate fully with each other in order to achieve a smooth, efficient and orderly transfer of the Operating and Maintenance Contract Guarantee to the Province, BCTFA or the Substitute, as applicable.
- (d) A notice in writing from the Agent exercising the Senior Funder's rights under the Direct Agreement to step-in and assume the Concessionaire's rights and obligations under the Operating and Maintenance Contract or to novate or assign the Operating and Maintenance Contract that is received by the Operator prior to the receipt of a Step-In Notice given pursuant to this Agreement will have priority

over the Step-In Notice given pursuant to this Agreement, and in such circumstances only the notice received from the Agent will take effect and the Step-In Notice given pursuant to this Agreement will not bind the Operator.

- (e) If a Step-In Notice is given by the Province or BCTFA pursuant to this Agreement and, prior to the expiration of the 90-day period of time following delivery of a Province Collateral Agreement Notice (as defined in the Direct Agreement), a notice in writing from the Agent exercising the Senior Funders' right under the Direct Agreement to step-in and assume the Concessionaire's rights and obligations under the Operating and Maintenance Contract or to transfer, novate or assign the Operating and Maintenance Contract is received by the Operator, then, unless by such time the Operating and Maintenance Contract has been transferred, novated or assigned to a Substitute, the exercise by the Province or BCTFA, as the case may be, of its step-in rights pursuant to this Agreement will be deemed to have terminated, all rights and obligations of the Province arising from delivery of the Step-In Notice will be deemed to be cancelled and the provisions of Section 7(b) that would come into force and effect upon the delivery of a Step-In Notice will be deemed not to have come into force or effect.
- (f) The Operator will ensure, through measures satisfactory to the Province and BCTFA acting reasonably, that the terms of the Operating and Maintenance Contract 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 their step-in rights under this Agreement will not entitle the issuer of any Operating and Maintenance Contract Performance Security to terminate, alter, amend or not comply with its obligations under the Operating and Maintenance Contract Performance Security, and that the terms of all Operating and Maintenance Contract Performance Securities will remain in full force and effect notwithstanding the exercise of such step-in rights and will provide further that upon the Province or BCTFA exercising their step-in rights, the Province, BCTFA or the Substitute (as applicable) will be entitled to all rights and benefits under such Operating and Maintenance Contract Performance Securities as though the Province were the originally named beneficiary thereunder.

7A. AMOUNTS PAID BY THE PROVINCE, BCTFA OR SUBSTITUTE

Any amounts paid by the Province, BCTFA or a Substitute to the Operator pursuant to this Agreement or any agreement or other document entered into pursuant hereto (including, for greater certainty, any amounts paid by the Province to the Operator pursuant to Section 5 hereof and any amounts paid by the Province, BCTFA or a Substitute pursuant to Section 7(b) hereof or

any agreement or other document entered into pursuant thereto) will be deemed to be amounts owing by the Concessionaire to the Province under the Concession Agreement and, subject to Section 44.8 [Rights of Set-Off] of the Concession Agreement, may be set-off against any payments to be made by the Province to the Concessionaire under the Concession Agreement including the Performance Payment and any Termination Sum (which term, for this purpose, will be deemed to include any Adjusted Highest Qualifying Bid Price), provided that there will be no double counting in favour of the Province of any sums paid by the Province, BCTFA or a Substitute to the Operator pursuant to this Agreement or any agreement or other document entered into pursuant hereto and any sums taken into account in calculating the relevant Termination Sum.

7B. APPROPRIATION

The Operator and the Concessionaire acknowledge that they are aware of the provisions of subsection 28(2) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138.

8. OPERATOR LIABILITY

- (a) The obligations and liabilities of the Operator under this Agreement and/or the Operating and Maintenance Contract will 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 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 or BCTFA delivers a Step-In Notice, the Operator will have no greater liability to the Province, BCTFA or any Substitute than it would have had to the Concessionaire under the Operating and Maintenance Contract, and the Operator will be entitled in any proceedings by the Province, BCTFA or any Substitute to rely on any liability limitations in the Operating and Maintenance Contract.

9. DISCLOSED DATA DISCLAIMER

- (a) Neither the Province nor BCTFA gives any representation, warranty or undertaking 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 execution of this Agreement) relevant or material to the Project, the Project Facilities, the Site or the Adjacent Areas or the Graving Dock Site or any obligations undertaken by the Operator under the Operating and Maintenance Contract. Neither the Province nor BCTFA will be liable to the Operator in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Concessionaire, the Operator any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Concessionaire or the Operator (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
- (b) Neither the Province nor BCTFA will have any liability to the Operator (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, as a result of, any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

10. THE CONCESSIONAIRE AS PARTY

The Concessionaire is a party to this Agreement for the purpose of giving its consent to and agreeing to be bound by the provisions hereof. The Concessionaire acknowledges and agrees that the Operator will not be in breach of the Operating and Maintenance Contract and the Guarantor will not be in breach of the Operating and Maintenance Contract Guarantee by reason of complying with their obligations hereunder.

11. ASSIGNMENT

- (a) The Concessionaire will not, without the prior written consent of the Province and BCTFA, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement other than as assignment by way of security in favour of the Senior Funders in accordance with the Senior Funding Agreements.
- (b) The Province and BCTFA may assign or otherwise dispose of the benefit of the whole or part of this Agreement in conjunction with a permitted assignment under the terms of the Concession Agreement and only to a permitted assignee

thereunder, on written notice to the Concessionaire and the Operator and otherwise will not, without the prior written consent of the Concessionaire or the Operator (which consent shall not be unreasonably withheld or delayed), assign or otherwise dispose of the benefit of the whole or any part of this Agreement. Notwithstanding the foregoing, no consent of the Concessionaire or the Operator will be required in the event of an assignment by the Province or BCTFA or other disposal of the benefit of the whole or part of this Agreement to any person referred to in Sections 7(b)(viii), (ix) and (x).

- (c) The Operator will not, without the prior written consent of the Province and BCTFA, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement.

12. NOTICES

Any notices required or permitted under this Agreement will be in writing and (a) delivered personally, (b) sent by a recognized express mail or courier service, with delivery receipt requested, or (c) sent by confirmed facsimile transmission with telephonic confirmation, to the following addresses:

If to BCTFA or the Province: Ministry of Transportation
5th Floor, 940 Blanshard Street
Victoria BC V8W 9T5
Facsimile: (250) 387 6431
Attention: Assistant Deputy Minister, Highways

If to the Operator SNC-Lavalin Profac Services Inc.
Address: 304 The East Mall
Suite 900
Toronto ON M9B 6E2

Fax No.: (416) 207-4702
Attn: The President

If to the Guarantor SNC-Lavalin Profac Inc.
Address: 455 boul. Rene-Levesque Ouest
Montreal QC H2Z 1Z3

Fax No.: (514) 398-9952
Attn: Mr Rejean Goulet

If to the Concessionaire	Okanagan Lake Concession Limited Partnership c/o 2800 – 666 Burrard Street Vancouver BC V6C 2Z7 Facsimile: 604 687 1612 Attention: President
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- (a) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile will also promptly be delivered personally or sent by a recognized express mail or courier service, with delivery receipt requested.
- (b) A Party may at any time and from time to time change its nominated address or facsimile number by prior notice to the other Parties, and such change will be effective on the day that next follows the recipient Parties' receipt of such notice.
- (c) Notices given by mail will be effective upon the earlier of (i) actual receipt, and (ii) 7 days after mailing if mailed within Canada, and 21 days after mailing if mailed outside of Canada. Notices delivered personally will be effective upon delivery. Notices given by facsimile will be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:
 - (i) within 3 hours after sending, if sent on a Working Day between the hours of 9 a.m. and 4 p.m.; or
 - (ii) by noon on the next following Working Day, if sent after 4 p.m. on a Working Day but before 9 a.m. on that next following Working Day.
- (d) If the Party giving the notice or communication knows or ought reasonably to know of difficulties or disruption with the postal system which might affect the delivery of mail:
 - (i) any such notice will not be mailed but will be made or given by personal delivery or by facsimile transmission; and
 - (ii) where such difficulties or disruption arise after mailing but before the date of receipt as provided in this Section 12, the Party giving such notice will make or give such notice by personal delivery or by facsimile transmission.

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- (e) To be effective, notices and all formal communications under this Agreement must be in writing and delivered as provided in this Section 12, and must be signed by an authorized representative of the Party giving the notice. E-mails will not be used for and will not constitute notices under this Agreement.
 - (f) Oral communications will not constitute formal communication under this Agreement and no Party has any obligation to act on any oral communication, instruction or assurance unless and until it is confirmed in writing. Any action taken by a Party based on oral communications, instructions or assurances will be at that Party's sole risk and will be without liability to or recourse against the other Parties.

13. AMENDMENTS

No oral or written amendment or modification of this Agreement, either before or after execution and delivery of this Agreement, will be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized officer of each Party sought to be bound thereby.

14. WAIVER

- (a) No waiver of any rights under this Agreement will be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.
- (b) Any Party's waiver of any of its rights under this Agreement or of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition and other provision hereof, any course of dealing or custom of the trade notwithstanding.

15. TIME IS OF THE ESSENCE

Time is of the essence of this Agreement and each provision herein.

16. INDEPENDENT CONTRACTOR

The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant or of principal and agent. Neither the Concessionaire nor the

Operator nor any of its or their representatives are or will be deemed to be an employee or agent of the Province or BCTFA for any purpose.

17. ENTIRE AGREEMENT

Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

18. SEVERABILITY

If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

19. ENUREMENT

This Agreement will enure to the benefit of and be binding upon each of the Parties and their respective successors and permitted transferees and assigns.

20. DISPUTE RESOLUTION

Any dispute under this Agreement will be resolved in accordance with the Disputes Resolution Procedure.

21. GOVERNING LAW AND JURISDICTION

- (a) This Agreement will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and will be treated in all respects as a contract in British Columbia, without regard to conflict of laws principles.
- (b) Subject to the provisions of Section 20, the Parties agree to submit to the non-exclusive jurisdiction of the courts of British Columbia as regards to any claim or matter arising in relation to this Agreement.

22. FURTHER ASSURANCE

Each Party will do all things and execute all further documents necessary to give full effect to this Agreement.

23. PROOF OF AUTHORITY

The Province reserves the right to require everyone executing this Agreement on behalf of the Concessionaire, the Operator or any Guarantor to provide proof, in a form acceptable to the Province, that they have the requisite authority to execute this Agreement on behalf of and to bind the Concessionaire, the Operator or the relevant Guarantor, respectively.

24. CONFIDENTIALITY

The Operator and the Guarantor will comply with the obligations on the part of the Concessionaire contained in Section 50 [Confidentiality] of the Concession Agreement.

25. 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 rights, benefits, responsibilities and obligations of the Concessionaire or the Province under and as set forth in the Concession Agreement.

26. 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 will, upon any other Party's request, promptly forward to such Party an original signed copy of this Agreement which was so faxed.

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

EXECUTED AND DELIVERED by HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, by a
duly authorised representative of the MINISTER OF
TRANSPORTATION:

JOHN DYBLE
Deputy Minister, Ministry of Transportation

EXECUTED AND DELIVERED by the BC TRANSPORTATION
FINANCING AUTHORITY

By JOHN DYBLE
Chief Executive Officer

EXECUTED AND DELIVERED by SNC-LAVALIN PROFAC
SERVICES INC. acting by

Authorized Signatory

Full Name

Authorized Signatory

Full Name

EXECUTED AND DELIVERED by SNC-LAVALIN PROFAC INC.,

acting by

Authorized Signatory

Full Name

Authorized Signatory

Full Name

EXECUTED AND DELIVERED by OKANAGAN LAKE
CONCESSION LIMITED PARTNERSHIP by

Its General Partner, Okanagan Lake Concession Limited

Andre Dufour
Director