

APPENDIX 4C – HANDBACK REQUIREMENTS

1. DEFINITIONS AND INTERPRETATION

In this Appendix, in addition to the definitions set out in Schedule 1 to this Agreement:

“**Handback Amount**” means Project Co’s estimate of the cost of carrying out the Handback Works Plan;

“**Handback Certificate**” has the meaning given in Section 4.2(a) of this Appendix;

“**Handback Holdback**” has the meaning given in Section 3.1(a) of this Appendix;

“**Handback Requirements**” means the requirements for the condition of the Facility on the Expiry Date described in Section 2.1 of this Appendix;

“**Handback Survey**” has the meaning given in Section 2.2 of this Appendix;

“**Handback Works**” has the meaning given in Section 2.3(a) of this Appendix; and

“**Handback Works Plan**” has the meaning given in Section 2.3(b) of this Appendix;

2. FACILITY HANDBACK

2.1 Facility Condition

On the Expiry Date, the Facility and each element comprising the Facility will be in a condition which is:

- (a) consistent with the Facility and each of the elements of the Facility having been designed and constructed in accordance with the applicable design life requirements set out in Schedule 3 [Design and Construction Specifications] of this Agreement; and
- (b) consistent with Project Co having performed the Services and maintained the Facility in accordance with Schedule 4 [Services Protocols and Specifications].

2.2 Handback Survey

In conjunction with the preparation of the Annual Service Plan for the year commencing three years prior to the Expiry Date, Project Co and the Authority will conduct a joint inspection and survey of the Facility (the “**Handback Survey**”).

2.3 Results of Survey

If the Handback Survey indicates that any element of the Facility will not be in a condition consistent with the Handback Requirements upon Project Co implementing the Plans over the remainder of the Term, within 60 days of completion of the Handback Survey Project Co will deliver to the Authority’s Operating Period Representative in accordance with Sections 4.7 and 4.8 of Schedule 4 [Services Protocols and Specifications]:

- (a) Project Co’s proposal as to the works (if any) (the “**Handback Works**”) required to be carried out in respect of the Facility to satisfy the Handback Requirements as at the Expiry Date;
- (b) Project Co’s proposal for the carrying out of the Handback Works (the “**Handback Works Plan**”) over the remainder of the Term as part of the Annual Service Plan, Life Cycle Plan and the Five Year Maintenance Plan then in effect and describing the total works to be carried out as well as the method and schedule for carrying out such works; and
- (c) Project Co’s calculation of the Handback Amount.

The Authority's Operating Period Representative may, within 20 Business Days after receipt of the Handback Works and Handback Works Plan, review and comment on such plan in accordance with Section 4.8 of Schedule 4 [Services Protocols and Specifications].

3. HANDBACK WORK

3.1 Performance of Handback Work

By agreement between the parties, or determination in accordance with the Dispute Resolution Procedure, of the Handback Works, the Handback Works Plan and the Handback Amount, Project Co will:

- (a) within 10 Business Days of the agreement, or determination in accordance with the Dispute Resolution Procedure, deliver to the Authority a performance bond or letter of credit:
 - (1) issued by a financial institution listed on Schedule 1 of the *Bank Act* or a surety company authorized to carry out business in British Columbia;
 - (2) securing performance by Project Co of the Handback Works; and
 - (3) having a term which expires no sooner than two years after the Expiry Date,
 or other cash collateral acceptable to the Authority, acting reasonably, in an amount equal to the Handback Amount (the "**Handback Holdback**"); and
- (b) at its own cost and expense, carry out the Handback Works in accordance with the Handback Works Plan and Good Industry Practice, notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.

3.2 Obligation of Project Co

Notwithstanding:

- (a) the agreement of the Authority's Operating Period Representative to any Handback Works, the Handback Works Plan or the Handback Amount;
- (b) the participation of the Authority's Operating Period Representative in the Handback Survey; or
- (c) the complete or partial carrying out of the Handback Works,

Project Co will not be released from any obligation to conduct any other inspection or to perform any other works in accordance with this Agreement.

4. COMPLETION OF HANDBACK WORK

4.1 Further Inspection

Not later than six months prior to the Expiry Date, Project Co and the Authority will conduct a further joint inspection and survey of the Facility. Such inspection will confirm whether or not the condition of the Facility meets the Handback Requirements.

4.2 Notice from the Authority

On, or within five Business Days after, the Expiry Date, the Authority's Operating Period Representative will either:

- (a) issue to Project Co a handback certificate confirming completion of the Handback Works (the "**Handback Certificate**") and return the Handback Holdback to Project Co; or
- (b) notify Project Co of its decision not to issue the Handback Certificate:

- (1) stating the reasons for such decision;
- (2) setting out each respect in which the Handback Works have not been completed or the Facility does not comply with the Handback Requirements; and
- (3) stating the Authority's Operating Period Representative's estimate of the cost of completing all work required for the Facility to comply in all respects with the Handback Requirements.

4.3 Response from Project Co

Project Co may, within 30 days after receipt of the notice given in accordance with Section 4.2(b) of this Appendix by notice to the Authority's Operating Period Representative, object to any matter set out in the Authority's Operating Period Representative notice by:

- (a) giving details of the grounds of each such objection; and
- (b) setting out Project Co's proposals in respect of such matters.

4.4 Dispute

If it is agreed, or determined in accordance with the Dispute Resolution Procedure, that the Facility did not, at the Expiry Date, comply in all respects with the Handback Requirements:

- (a) Project Co will:
 - (1) complete any outstanding Handback Works within 60 days of the Expiry Date; and
 - (2) pay to the Authority no later than 60 days after the Expiry Date an amount, if any, equal to the estimated cost of completing any outstanding Handback Works (based on the cost estimate provided by the Authority's Operating Period Representative in accordance with Section 4.2(b)(3), unless otherwise agreed or determined in accordance with the Dispute Resolution Procedure), so that the Facility is in a condition which complies with the Handback Requirements. Upon payment being received in full by the Authority, the Authority will issue the Handback Certificate and return the Handback Holdback to Project Co and if such payment is not received from Project Co when due, the Authority may draw any unpaid amounts against the Handback Holdback and release the balance of the Handback Holdback to Project Co.