



CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is made as of the [D,MM,YYYY] (the “Effective Date”) and is:

BETWEEN

[Company Name]

AND

Her Majesty the Queen in Right of British Columbia
as represented by the Minister of Environment and Climate Change
Strategy, BC (the Province)

with a mailing address of:

Ministry of Environment and Climate Change Strategy
Climate Action Secretariat, Climate Investment Branch
PO BOX 9486 STN PROV GOVT,
Victoria, British Columbia,
Canada V8W 9W6

WHEREAS:

The Parties intend to enter into discussions and where applicable negotiations in respect of the following purpose (the “Purpose”):

[description of purpose]

Each Party wishes to disclose to the other Party certain Confidential Information (as defined below) in respect of the Purpose.

THIS AGREEMENT WITNESSES that in consideration of the mutual promises set out in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. In this Agreement:

- (a) “Confidential Information” means non-public information, whether in written, oral, graphic or any other form, of a Party that is disclosed to the other Party during the Discussions including without limitation, the fact that such Discussions are occurring or have occurred, proprietary planning tools, intellectual property, third party agreements, commercial arrangements, financial information, information in respect of operation, facilities, techniques and technology, and any other information in respect of the Disclosing Party, all non-public combinations of separate items that individually may or may not be generally known, items for which the Disclosing Party is under an obligation of confidentiality to Third Parties, as well as all analyses, reports and compilations prepared by or for the Disclosing Party in respect of the Purpose, including any information or data on which such analyses, reports or compilations are based, and all copies and tangible embodiments of the foregoing in all media and any summaries of, or extracts or quotations from, Confidential Information prepared by the Receiving Party that include information that would be Confidential Information if provided by the Disclosing Party. Confidential Information does not include information that is: (a) publicly available without breach of this Agreement; (b) already known to or in the possession of the Receiving Party prior to receipt of such information from the Disclosing Party as evidenced by written records; (c) received from a Third Party having the right to disclose such information without restriction; and (d) independently developed by the Receiving Party without access to, or use of, any information disclosed by the Disclosing Party as evidenced by written records;
- (b) “Disclosing Party” means a Party that discloses Confidential Information to the other Party;
- (c) “Discussions” means any interactions, discussions and negotiations between the staff of the Province’s Ministry of Environment and Climate Change Strategy, Climate Investment Branch, and [Company Name] regarding the Purpose. For certainty, a reference to “Discussions” includes a reference to any interactions, discussions or negotiations between the Parties regarding the Purpose which occurred before the Effective Date;
- (d) “Purpose” has the meaning given to it in the recitals;
- (e) “Receiving Party” means a Party that receives Confidential Information from the other Party;
- (f) “Secondary Information” has the meaning given to it in Section 4; and
- (g) “Third Party” means any person, individual, entity, shareholder, corporation, partnership, body, government, or legislature whatsoever not a party to this Agreement.

2. Confidentiality Obligations. Subject to the exclusions set out in Section 3, the Receiving Party shall treat as confidential, and shall not disclose to any Third Party, the Confidential Information. The Receiving Party shall not, directly or indirectly, copy, transmit, reproduce, make available, sell or disclose any of the Confidential Information or the Receiving Party’s recollections thereof.

The Receiving Party shall not make any use whatsoever of the Confidential Information except to the extent necessary for the Purpose.

3. Exclusions. Notwithstanding the confidentiality obligations set out in Section 2:

(a) the Receiving Party may disclose:

- (i) Confidential Information with the written consent of the Disclosing Party;
- (ii) Confidential Information to its directors, officers, employees, consultants and advisors, provided that the Receiving Party shall limit such disclosure to that Confidential Information which is required for the Purpose and to those of its directors, officers, employees, counsel or consultants who have a need to know such information for the Purpose, have been advised of the confidential nature of such information, and are bound by an obligation of confidentiality similar to that set forth in this Agreement; and
- (iii) Confidential Information to the extent that such disclosure is required by law or by the order of any judicial, administrative, or similar body with enforcement powers having jurisdiction over the Receiving Party, provided that the Receiving Party will promptly notify the Disclosing Party in writing of such requirement and will co-operate reasonably with the Disclosing Party at the Disclosing Party's expense in seeking to challenge or to restrict the scope of such disclosure;

(b) without limiting the foregoing, **the Province** may disclose Confidential Information to any ministers, deputy ministers or servants or employees of the Province of British Columbia who have been advised of the confidential nature of such information;

(c) the Province may summarize, quote or provide extracts of Confidential Information or the purpose of disclosures allowed under this section.

4. Computer Back-up. The Parties acknowledge that a Receiving Party's computer systems may automatically back-up Confidential Information disclosed to it by the Disclosing Party. The Parties agree that to the extent that such computer back-up procedures automatically create copies of Confidential Information (the "Secondary Information") the Receiving Party may retain such Secondary Information in its archival computer storage for the period that it would normally archive computer records. Secondary Information shall be subject to the provisions of this Agreement until destroyed and may not be accessed by the Receiving Party during such period of archival storage.

5. Freedom of Information and Protection of Privacy Act. The Parties acknowledge that **the Province** is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations enacted thereunder, and that **the Province's** non-disclosure obligations under this Agreement are subject to those enactments, as amended or replaced from time to time.

6. Ownership. All Confidential Information is and shall continue to be the exclusive property of the Disclosing Party. This Agreement is not intended to and does not grant, expressly or by

implication, any right or license to any intellectual property right or similar proprietary right of any kind that the Disclosing Party may possess.

7. **Safeguard of Confidential Information.** The Receiving Party agrees to exercise the same standard of care in safeguarding the Confidential Information against loss, theft, destruction or inadvertent disclosure as it would in respect of its own confidential information.
8. **Injunction.** The Receiving Party acknowledges and agrees that any breach of this Agreement by the Receiving Party may cause irreparable harm to the Disclosing Party. If the Receiving Party fails to abide by the terms of this Agreement, the Disclosing Party shall, if the Province is the Disclosing Party, be entitled to an injunction, specific performance or other equitable relief as well as any equitable accounting of all profits and benefits arising out of any breach of this Agreement and no bond or other security shall be required from the Disclosing Party in connection therewith, and if the Province is the Receiving Party, such equitable remedies as are available against the Province under the *Crown Proceeding Act* or other legislation. The rights and remedies specified in this Agreement are in addition to, and not in substitution for, any rights or remedies of the Disclosing Party at law or in equity. If the Disclosing Party is successful in obtaining an injunction or is otherwise successful in any other action arising out of a breach of this Agreement, the Receiving Party will pay to the Disclosing Party the full amount of the Disclosing Party's legal fees and expenses incurred by the Disclosing Party in pursuing such action(s).
9. **Liability Exclusion.** In no event will either Party be liable to the other Party in connection with any breach of this Agreement for any indirect, incidental or consequential damages, including loss of profits.
10. **Term.** This term of this Agreement commences on the Effective Date and ends on the earlier of the date the Discussions are terminated by mutual agreement of the Parties or 24 months after the Effective Date [the ____ day of _____, 20__].
11. **Survival.** The obligations of the Receiving Party respecting the use and disclosure of the Confidential Information under this Agreement and the rights of the Disclosing Party to enforce such obligations will survive and will continue for a period of 2 years after the expiration or termination of this Agreement.
12. **Miscellaneous.**
 - (a) **Binding Nature.** This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.
 - (b) **No Warranty.** All Confidential Information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding its accuracy, completeness, performance, non-infringement, or fitness for particular purpose.
 - (c) **Assignment.** Neither Party may assign or transfer this Agreement or any rights or obligations under this Agreement without the prior written consent of the other Party.
 - (d) **Entire Agreement.** This Agreement represents the entire agreement and understanding of the Parties with respect to the non-disclosure of the Confidential Information.

- (e) **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.
- (f) **Governing Law; Jurisdiction.** This Agreement shall be governed by the laws of the Province of British Columbia and Canada applicable therein, and the Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

READ, UNDERSTOOD AND AGREED, as of the day and year first written above.

[Company Name]

by its authorized signatory:

Name:

Signature: _____

**Her Majesty the Queen in Right of British
Columbia (as represented by the Minister of
Environment and Climate Change Strategy)**

by its authorized signatory:

Name:

Signature: _____

Title: