

**PROJECT AGREEMENT
(REDACTED VERSION)**

THUNDER BAY CORRECTIONAL COMPLEX PROJECT

CONFIDENTIAL

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION 2

 1.1 Definitions and Interpretation 2

 1.2 Conflict of Terms 3

 1.3 Conflict of Documents 5

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE 5

 2.1 Effective Date 5

 2.2 Standby Letter of Credit 5

 2.3 Financial Close 6

 2.4 Disruption in Financial Markets 6

3. SCOPE OF AGREEMENT 7

 3.1 Scope of Agreement 7

4. BUSINESS OPPORTUNITIES 7

 4.1 Business Opportunities 7

5. REPRESENTATIONS AND WARRANTIES 8

 5.1 Project Co Representations and Warranties 8

 5.2 Contracting Authority Representations and Warranties 10

6. BACKGROUND INFORMATION 12

 6.1 Review of Background Information 12

 6.2 No Warranty for Background Information 12

 6.3 No Claims or Liability in Respect of Background Information 12

 6.4 Exceptions 13

7. PROJECT DOCUMENTS 13

 7.1 Project Documents 13

 7.2 Ancillary Documents 14

 7.3 Changes to Lending Agreements and Refinancing 14

 7.4 Compliance with Lending Agreements 15

8. CONTRACTING AUTHORITY RESPONSIBILITIES..... 15

 8.1 General..... 15

 8.2 Contracting Authority Permits, Licences, Approvals and Agreements 15

9. PROJECT CO RESPONSIBILITIES 16

 9.1 Other Business 16

 9.2 General..... 16

 9.3 Project Co Parties..... 17

 9.4 Permits, Licences, Approvals and Agreements 17

 9.4A Listed Project Co PLAAs 19

 9.4B Listed Project Co PLAA Notices 21

 9.5 Safety During the Works Phase 21

 9.6 Additional Works..... 22

 9.7 Protest and Trespass..... 25

 9.8 Minimize Disturbance and Works at Existing Facilities 26

 9.9 COR Certification..... 27

 9.10 Demolition Requirements 29

 9.11 Protection of Works and Property..... 31

 9.12 Pandemic and Epidemic Plans 31

 9.13 Anti-Racism and Anti-Discriminatory Processes, Policies and Procedures 32

10. REPRESENTATIVES 33

 10.1 The Contracting Authority Representative 33

 10.2 The Project Co Representative..... 33

 10.3 Communications to Representatives..... 34

 10.4 Key Individuals..... 34

11. WORKS COMMITTEE 35

 11.1 Establishment..... 35

 11.2 Function and Role..... 35

 11.3 Term of Works Committee 37

 11.4 Replacement of Committee Members 37

 11.5 Procedures and Practices..... 37

11.6	Proceeding at Risk	38
12.	FACILITIES MANAGEMENT COMMITTEE.....	39
12.1	Establishment.....	39
12.2	Function and Role.....	39
12.3	Replacement of Committee Members	41
12.4	Procedures and Practices.....	41
13.	QUALITY ASSURANCE	42
13.1	Quality Plans and Systems.....	42
13.2	Changes to Plans.....	44
13.3	Quality Manuals and Procedures	44
13.4	Quality Monitoring	45
14.	SITE ACCESS AND INVESTIGATION.....	45
14.1	Licence to Site	45
14.2	Non-Exclusive Licence and Development of Site	46
14.3	Limited Access Areas	46
14.4	Naming and Signage.....	47
14.5	No Interest in Land	47
14.6	Non-Disturbance Agreement	47
14.7	Changes to the Site	47
14.8	Adequacy of the Site.....	48
14.9	Inspection and Investigation of the Site.....	48
14.10	No Warranty in Respect of the Site	48
14.11	No Claims in Respect of the Lands.....	49
15.	TITLE ENCUMBRANCES.....	49
15.1	Title Encumbrances	49
15.2	No Site Encumbrances.....	50
15.3	<i>Construction Act</i> (Ontario)	50
16.	SITE CONDITION.....	51
16.1	Acceptance of the Site and Site Condition.....	51

16.2 Contamination..... 51

16.3 Items of Geological, Historical or Archaeological Interest or Value..... 52

16.4 Species-at-Risk 54

16.5 Differing Other Site Conditions..... 55

17. CITY OF THUNDER BAY AND THIRD PARTY FINANCIAL OBLIGATIONS 57

17.1 City of Thunder Bay and Third Party Financial Obligations..... 57

17.2 Contracting Authority Financial Obligations..... 58

18. DESIGN AND CONSTRUCTION OBLIGATIONS..... 58

18.1 Overall Responsibility 58

18.2 Complete and Operational Facility 58

18.3 Development of Design 59

18.4 Start-Up Meeting 60

18.5 Design Review Meetings and Workshops 61

18.6 Correctional Services Functionality..... 64

18.7 Performance of Design Obligations..... 65

18.8 General Construction Obligations..... 65

18.9 Substitutions..... 67

18.10 Change in Standards 67

18.11 Works Submittals..... 68

18.12 Cash Allowance Items 68

18.13 Enbridge Natural Gas Distribution Capacity 70

19. CONTRACTING AUTHORITY ACCESS AND MONITORING 71

19.1 Contracting Authority Access During the Works Phase..... 71

19.2 Right to Use Site by Contracting Authority and Province Persons 71

19.3 Right of Access to Additional Contractors 72

19.4 Increased Monitoring..... 72

19.5 Right to Open Up..... 72

19.6 No Relief from Obligations 72

20. WORKS SCHEDULE AND WORKS REPORT 73

20.1 Completion of Works..... 73

20.2	The Works Schedule.....	73
20.3	Changes to the Works Schedule	75
20.4	Failure to Maintain Schedule.....	75
20.5	Notification of Early Substantial Completion.....	77
20.6	Works Report.....	78
21.	EQUIPMENT	78
21.1	Equipment Steering Committee.....	78
21.2	Contracting Authority Equipment Responsibilities	80
21.3	SolGen Equipment.....	81
21.4	Project Co Equipment, Existing Equipment and SolGen Equipment Responsibilities.....	81
21.5	Additional Project Co Equipment Responsibilities	88
21.6	Minimizing Disruptions	89
21.7	Equipment Training.....	89
21.8	Scheduling of Equipment, SolGen Equipment and Existing Equipment Related Activities	89
21.9	Maintenance of In-Contract Equipment, Not-In-Contract Equipment, SolGen Equipment and Existing Equipment	91
21.10	Payment for Not-In-Contract Equipment.....	91
21.11	Monthly Equipment Payment	92
22.	LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN	92
22.1	LEED Design and Construction Obligations.....	92
22.2	LEED Progress Reports	92
22.3	LEED BD+C Silver Rating and LEED Mandatory and Prerequisites Credits	92
22.4	Greenhouse Gas Credits.....	93
22.5	Energy Matters.....	93
23.	INDEPENDENT CERTIFIER AND COMBINED DISPUTE RESOLUTION BOARD	93
23.1	Appointment of Independent Certifier.....	93
23.2	Role of Independent Certifier	94
23.3	Changes to Terms of Appointment of Independent Certifier	94
23.4	Right to Change Appointment of the Independent Certifier.....	94
23.5	Cooperation and Independent Certifier.....	94

23.6 Payment of Independent Certifier..... 94

23.7 Replacement of Independent Certifier..... 94

23.8 Security Clearance Check Requirements..... 95

23.9 Combined Dispute Resolution Board 95

24. COMMISSIONING AND COMPLETION..... 96

24.1 Commissioning Activities..... 96

24.2 Final Commissioning Program 96

24.3 Commencement of Project Co Commissioning..... 97

24.4 Substantial Completion Certificate..... 97

24.5 Operation and Maintenance Manuals and Warranties 100

24.6 Contracting Authority Commissioning..... 100

24.7 Countdown Notice and Substantial Completion Deliverables..... 101

24.8 Minor Deficiencies and Seasonal Works 101

24.9 Rectification of Minor Deficiencies, Completion of Seasonal Works..... 103

24.10 Failure to Rectify Minor Deficiencies and Complete Seasonal Works and Release of Works Holdbacks..... 104

24.11 Final Completion Countdown Notice 105

24.12 Final Completion Certificate..... 105

24.13 Effect of Certificates/Use..... 106

24.14 Transition..... 107

24.15 Transition Subcommittee..... 107

25. PROJECT CO SERVICE OBLIGATIONS..... 108

25.1 Overall Responsibility 108

25.2 Commencement of Services 108

25.3 Coordination and No Disruption..... 108

25.4 No Closure of Facility..... 108

25.5 Equipment for Project Co Services..... 108

26. MAINTENANCE 108

26.1 Maintenance Plans 108

26.2 Revisions to Scheduled Maintenance Plan 109

26.3	Contracting Authority Change in Timing	110
26.4	Unscheduled Maintenance Work	110
26.5	Emergency Maintenance Work.....	110
26.6	Other Maintenance Work.....	111
26.7	Plant Services.....	111
26.8	Performance Audits	111
27.	HUMAN RESOURCES	112
27.1	[INTENTIONALLY DELETED].....	112
27.2	[INTENTIONALLY DELETED].....	112
27.3	[INTENTIONALLY DELETED].....	112
27.4	Admittance of Personnel.....	112
27.5	Confirmation of Action.....	113
27.6	Notification of Personnel	113
27.7	Finality as to Admission	113
27.8	[INTENTIONALLY DELETED].....	113
27.9	[INTENTIONALLY DELETED].....	113
27.10	[INTENTIONALLY DELETED].....	113
27.11	Security Clearance Check Requirements and Changes in Security Clearance Check Requirements.....	113
27.12	Staff Competency	113
27.13	Convictions	114
27.14	Disciplinary Action.....	114
27.15	Human Resources Policies.....	114
27.16	Management Organizations	115
27.17	Adherence to SolGen Policies	115
27.18	[INTENTIONALLY DELETED].....	115
27.19	Health Screening.....	115
27.20	Retention of Screening Records.....	115
27.21	Orientation Procedure	116
27.22	Employee Training	116
28.	STOCKS, CONSUMABLES, MATERIAL AND EQUIPMENT	116

28.1	Standards.....	116
28.2	Hazardous Substances and Materials.....	116
28.3	Change in Hazardous Materials Policies	118
29.	MONITORING.....	118
29.1	Monitoring of Performance.....	118
29.2	Failure Points	119
29.3	Warning Notices	119
29.4	Monitoring Notices	119
30.	CONTRACTING AUTHORITY’S REMEDIAL RIGHTS	121
30.1	Exercise of Remedial Rights.....	121
30.2	Emergency	123
30.3	Rectification.....	123
30.4	Costs and Expenses.....	125
30.5	Reimbursement Events	125
30.6	Reimbursement if Improper Exercise of Rights	125
31.	PAYMENT	126
31.1	Payments During the Construction Period.....	126
31.2	Monthly Service Payments and Energy Cost Reimbursement Payments	126
31.3	Payment Adjustments	126
31.4	Payment Commencement	127
31.5	Adjustments to Payment Periods	127
31.6	Invoicing and Payment Arrangements.....	127
31.7	Electronic Invoicing.....	130
31.8	Final Payment Periods	130
31.9	Performance Monitoring Report, Payment Adjustment Report and Monthly Energy Report Disputes.....	131
31.10	Payments.....	131
31.11	Manner of Payment.....	131
31.12	Intentionally Deleted.....	132
31.13	Set-Off	132

31.14	Effect of Payment	132
31.15	Audit of Performance of Project Operations.....	132
31.16	No Other Entitlement.....	133
32.	TAXES.....	133
32.1	Taxes.....	133
32.2	Changes in Scope of Taxation	134
32.3	Changes in Recoverability of Tax Credits.....	134
32.4	Information and Assistance Provided by Project Co	135
32.5	Residency – <i>Income Tax Act</i> (Canada)	135
32.6	Taxes – General	135
32.7	Taxes – Indemnity	135
33.	FINANCIAL MODEL.....	136
33.1	Appointment of Custodian.....	136
33.2	Delivery and Use of Financial Model.....	136
34.	RECORDS, INFORMATION AND AUDIT	137
34.1	Records Provisions	137
34.2	Information and General Audit Rights	137
34.3	Delivery of Reports to Contracting Authority	138
35.	CHANGES IN LAW	139
35.1	Performance after Change in Law	139
35.2	Works Change in Law	139
35.3	Relevant Change in Law.....	139
35.4	Pandemic and Epidemic Change in Law	141
36.	VARIATIONS	144
36.1	Variation Procedure.....	144
36.2	Innovation and Value Engineering	144
37.	DELAY EVENTS.....	146
37.1	Definition.....	146

37.2 Consequences of a Delay Event..... 147

37.3 Mitigation..... 151

38. COMPENSATION EVENTS..... 151

38.1 Definition..... 151

38.2 Consequences of a Compensation Event 151

38.3 Mitigation..... 152

38.4 Insured Exposure 152

38.5 Delivery of Works Schedule..... 152

39. EXCUSING CAUSES 153

39.1 Definition..... 153

39.2 Consequences of an Excusing Cause..... 155

39.3 Mitigation..... 155

39.4 Insured Exposure 156

40. RELIEF EVENTS..... 156

40.1 Definition..... 156

40.2 Consequences of a Relief Event 157

40.3 Mitigation and Process..... 158

40.4 Insured Exposure 159

41. FORCE MAJEURE 159

41.1 Definition..... 159

41.2 Consequences of Force Majeure..... 159

41.3 Mitigation and Process..... 160

41.4 Insured Exposure 161

41.5 Modifications..... 161

42. PROJECT CO DEFAULT 161

42.1 Project Co Events of Default 161

42.2 Notification of Occurrence 166

42.3 Right to Termination..... 166

42.4 Remedy Provisions 166

42.5	Replacement of Non-Performing Service Provider	167
42.6	Contracting Authority’s Costs	169
42.7	No other Rights to Terminate	169
43.	CONTRACTING AUTHORITY DEFAULT	169
43.1	Contracting Authority Events of Default	169
43.2	Project Co’s Options	170
43.3	Project Co’s Costs	170
43.4	No Other Rights to Terminate	170
44.	RELIEF EVENT AND NON-DEFAULT TERMINATION	170
44.1	Termination for Relief Event	170
44.2	Termination for Force Majeure	171
44.3	Termination for Convenience	171
44.4	Automatic Expiry on Expiry Date	171
45.	EFFECT OF TERMINATION	171
45.1	Termination	171
45.2	Continued Effect – No Waiver	171
45.3	Continuing Performance	172
45.4	Consequences of Termination	172
45.5	Ownership of Information	174
45.6	Provision in Subcontracts	174
45.7	Transitional Arrangements	174
45.8	Termination upon Aforesaid Transfer	175
45.9	Survival	175
46.	COMPENSATION ON TERMINATION	176
46.1	Compensation on Termination	176
46.2	Full and Final Settlement	176
47.	EXPIRY TRANSITION PROCEDURE	177
47.1	Expiry Transition	177
48.	INTELLECTUAL PROPERTY	177

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MTDOCS 44793011v2

48.1	Representation and Warranty.....	177
48.2	Delivery of Project Data and Intellectual Property Rights	177
48.3	Licence of Project Data and Intellectual Property Rights.....	177
48.4	Jointly Developed Materials	178
48.5	Maintenance of Data	178
48.6	Claims	179
48.7	Contracting Authority Trade-Marks	179
48.8	Confidential Information	179
48.9	Government Use of Documents.....	179
48.10	Restrictions	180
49.	CONFIDENTIALITY / COMMUNICATIONS	180
49.1	Disclosure	180
49.2	Redaction	180
49.3	Disclosure to Government	181
49.4	Freedom of Information and Protection of Privacy Act	181
49.5	Use and Disclosure of Confidential Information	181
49.6	Exceptions.....	182
49.7	Survival of Confidentiality	183
49.8	Communications	183
50.	PERSONAL INFORMATION.....	183
50.1	General.....	183
50.2	Protection of Personal Information.....	184
50.3	Conflict and Survival.....	185
51.	INSURANCE AND PERFORMANCE SECURITY	185
51.1	General Requirements.....	185
51.2	No Relief from Liabilities and Obligations.....	185
52.	TITLE	185
52.1	Title.....	185
53.	INDEMNITIES.....	186

53.1	Project Co Indemnities to Contracting Authority	186
53.2	Contracting Authority Indemnities to Project Co	187
53.3	Conduct of Claims	188
53.4	Mitigation – Indemnity Claims	190
54.	LIMITS ON LIABILITY	190
54.1	Indirect Losses	190
54.2	No Liability in Tort.....	191
54.3	Sole Remedy	191
54.4	Maximum Liability	192
54A	LIQUIDATED DAMAGES	192
55.	DISPUTE RESOLUTION PROCEDURE	193
56.	ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL	193
56.1	Project Co Assignment	193
56.2	Contracting Authority Assignment.....	193
56.3	Subcontractors	194
56.4	Changes in Ownership and Control	194
56.5	Contracting Authority Due Diligence.....	196
56.6	Gain Share.....	196
57.	PROHIBITED ACTS.....	197
57.1	Definition	197
57.2	Remedies.....	198
57.3	Permitted Payments	199
57.4	Notification	199
57.5	Replacement of Project Co Party.....	199
58.	NOTICES.....	199
58.1	Notices to Parties	199
58.2	Notices to Representatives.....	200
58.3	Electronic Submission	200
58.4	Change of Address.....	200

58.5 Deemed Receipt of Notices 200

58.6 Service on Contracting Authority 201

59. EMERGENCY AND SECURITY MATTERS 201

59.1 Emergency 201

59.2 Photographs/Visual Records 201

60. CONTRACTING AUTHORITY DESIGNATE 202

60.1 Right to Designate 202

61. GENERAL 202

61.1 Amendments 202

61.2 Waiver 202

61.3 Relationship Between the Parties 203

61.4 General Duty to Mitigate 203

61.5 Actual Knowledge 204

61.6 Entire Agreement 204

61.7 No Reliance 204

61.8 Severability 204

61.9 Enurement 205

61.10 Governing Law and Jurisdiction 205

61.11 Cumulative Remedies 205

61.12 Further Assurance 205

61.13 Costs 205

61.14 Language of Agreement 205

61.15 Proof of Authority 206

61.16 Counterparts 206

61.17 Province Persons as Third Party Beneficiaries 206

61.18 Copyright Notice 206

SCHEDULES

Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Completion Documents
Schedule 3	-	Custody Agreement
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Direct Agreements
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Security Clearance Check Requirements
Schedule 8	-	[Intentionally Deleted]
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11A	-	Design Quality Plan and Construction Quality Plan
Schedule 11B	-	Service Quality Plan Outline
Schedule 12	-	Works Scheduling Requirements
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	[Intentionally Deleted]
Schedule 18	-	Communications
Schedule 19	-	Construction Period Payments
Schedule 20	-	Payment Mechanism
Schedule 21	-	[Intentionally Deleted]
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Contractor Site Specific Safety Manual Requirements
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	[Intentionally Deleted]
Schedule 34	-	Works Report Requirements
Schedule 35	-	Site
Schedule 36	-	Energy Matters
Schedule 37	-	[Intentionally Deleted]
Schedule 38	-	Reports

THIS PROJECT AGREEMENT is entered into as of the 22 day of April, 2022

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended

(“**Contracting Authority**”)

AND:

**ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP,
[REDACTED]**

(“**Project Co**”)

WHEREAS:

- A. SolGen, with the assistance of Contracting Authority, wishes to procure a new correctional complex in the City of Thunder Bay, Ontario.
- B. Contracting Authority commenced the procurement process for the Project by issuance of a request for qualifications for the Project on July 31, 2018.
- C. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing and maintenance of the Facility (the “**Project**”).
- D. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- E. The overriding priorities of SolGen and Contracting Authority in entering into and implementing this Project Agreement are enabling SolGen and other Province Persons to carry out all Correctional Complex Activities in a secure, dignified and efficient manner.
- F. The Project will proceed as a public-private partnership project and complies with the principles set out in the Ministry of Infrastructure’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector (the “**IPFP Framework**”).
- G. The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - 1. The public interest is paramount.
 - 2. Value for money must be demonstrable.
 - 3. Appropriate public control/ownership must be preserved.

- 4. Accountability must be maintained.
- 5. All processes must be fair, transparent and efficient.
- H. Public ownership and control of the Facility will be preserved.
- I. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that Contracting Authority and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Lenders’ Direct Agreement
Schedule 5	- Direct Agreements
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Security Clearance Check Requirements
Schedule 8	- [Intentionally Deleted]
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11A	- Design Quality Plan and Construction Quality Plan
Schedule 11B	- Service Quality Plan Outline
Schedule 12	- Works Scheduling Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program
Schedule 15	- Output Specifications
Schedule 16	- Title Encumbrances
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Schedule 18	- Communications
Schedule 19	- Construction Period Payments
Schedule 20	- Payment Mechanism
Schedule 21	- [Intentionally Deleted]
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination

Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Contractor Site Specific Safety Manual Requirements
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	[Intentionally Deleted]
Schedule 34	-	Works Report Requirements
Schedule 35	-	Site
Schedule 36	-	Energy Matters
Schedule 37	-	[Intentionally Deleted]
Schedule 38	-	Reports

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for the Project Co Proposal Extracts, on Commercial Close, the Request for Proposals and Project Co’s proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, Contracting Authority or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Contracting Authority, no consent, approval or satisfaction of Contracting Authority or the Contracting Authority Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;

- (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 27 Dispute Resolution Procedure;
 - (vi) Schedule 19 Construction Period Payments;
 - (vii) Schedule 20 Payment Mechanism;
 - (viii) Schedule 15 Output Specifications;
 - (ix) Schedule 25 Insurance and Performance Security Requirements;
 - (x) Schedule 22 Variation Procedure;
 - (xi) Schedule 10 Review Procedure;
 - (xii) Schedule 14 Outline Commissioning Program;
 - (xiii) Schedule 11A Design Quality Plan and Construction Quality Plan;
 - (xiv) Schedule 28 Refinancing;
 - (xv) Schedule 23 Compensation on Termination;
 - (xvi) Schedule 26 Record Provisions;
 - (xvii) Schedule 24 Expiry Transition Procedure;
 - (xviii) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xix) Schedule 13 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Contracting Authority, upon discovery of same, shall immediately give notice to the Contracting Authority Representative. The Contracting Authority Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.

- (d) Contracting Authority and Project Co shall comply with the determination of the Contracting Authority Representative pursuant to this Section 1.2 unless Contracting Authority or Project Co disputes the decision of the Contracting Authority Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

1.3 Conflict of Documents

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders’ Direct Agreement, the provisions of the Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 15 to 23, 27, 27.17, 32 to 36 and 48 to 61, and Schedules 1, 2, 7, 9 to 13, 16 to 18, 22, 25 to 27, and 31 will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) **[Intentionally Deleted].**

- (b) Unless a Standby Letter of Credit is drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall release and deliver the Standby Letter(s) of Credit to Project Co on Financial Close.

- (c) Project Co shall ensure that the Standby Letter(s) of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

- (d) If Project Co delivers multiple Standby Letter(s) of Credit from multiple Letter of Credit Providers in accordance with Section 9.1(2) of the Request for Proposals, Project Co acknowledges and agrees that:

- (i) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified rateable amount;
- (ii) Contracting Authority may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Providers’ contribution to security;
- (iii) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and
- (iv) the provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of Contracting Authority to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the

default giving rise to Contracting Authority's right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to Contracting Authority drafts of all documents referred to in Section 1 of Schedule 2 – Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to Contracting Authority the documents referred to in Section 1 of Schedule 2 – Completion Documents; and
 - (ii) Contracting Authority shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 – Completion Documents.
- (c) If Project Co fails to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)) and Contracting Authority does not waive such requirement, Contracting Authority will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Contracting Authority will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.
- (d) If Contracting Authority fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.
- (e) Project Co shall deliver to Contracting Authority each of the items referred to in Section 3 of Schedule 2 – Completion Documents by the applicable date set out in such Section.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.

- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Contracting Authority may in its sole discretion either:
 - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
 - (ii) direct Project Co to assign to Contracting Authority and Contracting Authority will assume:
 - (A) this Project Agreement, and all of Project Co’s right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
 - (B) those contracts between Project Co and any Project Co Party which Contracting Authority elects to be assigned.
- (c) If Contracting Authority exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and Section 2.4(b)(ii)(B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Proposal Fee plus any applicable HST on the Proposal Fee pursuant to Section 10.3.2 of the Request for Proposals plus **[REDACTED]**% of such fee. Contracting Authority’s obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Contracting Authority, that such fee represents full and final satisfaction of any obligation or liability of Contracting Authority to Project Co and any Project Co Parties in connection with this Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to Contracting Authority, except as otherwise provided in this Project Agreement. Project Co’s sole recourse to IO with respect to the subject matter of this Project Agreement shall be to IO in its capacity as agent for the Province.

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Project Co acknowledges that Contracting Authority reserves the right to all commercial and other opportunities in and at the Facility and the Existing Facilities and at the Site (“**Business Opportunities**”). Contracting Authority may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.
- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for Contracting Authority’s consideration. All such proposals shall

describe the Business Opportunity in full with the expected financial and other advantages to both Parties. Contracting Authority may accept any such proposal in its sole discretion and subject to such terms and conditions as Contracting Authority may require.

- (c) Notwithstanding that Project Co has proposed a Business Opportunity to Contracting Authority for its consideration, Project Co acknowledges that Contracting Authority reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.
- (d) In determining whether to accept any proposal in respect of a Business Opportunity, Contracting Authority shall consult with and take into account the views of SolGen, and shall, if so required by SolGen, submit the relevant proposal to SolGen for consideration.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close:
 - (i) Project Co [REDACTED] has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (A) [REDACTED];
 - (B) [REDACTED];
 - (C) [REDACTED];
 - (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction and maintenance of correctional facilities and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
 - (iii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
 - (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and

- conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vi) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
 - (vii) no Project Co Event of Default has occurred and is continuing;
 - (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
 - (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
 - (x) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
 - (xi) Project Co is able to meet its obligations as they generally become due;
 - (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
 - (xiii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
 - (xiv) Project Co is not a Non-Resident;

- (xv) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co [REDACTED] or in relation to the operation, management and ownership of the Project;
- (xvi) either
 - (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
 - (B) the COR-Qualified Construction Project Co Party:
 - (I) is in possession of its ISO 45001 Accreditation which remains in good standing and has the ability to maintain such ISO 45001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction Project Co Party receives its COR Certification as required under this Project Agreement, and
 - (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement; and
- (xvii) to the knowledge of Project Co, no Restricted Person has directly or indirectly an Economic Interest in Project Co, [REDACTED] or the Project.

5.2 Contracting Authority Representations and Warranties

- (a) Contracting Authority represents and warrants to Project Co that as of Commercial Close:
 - (i) IO is a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c.9, Schedule 32, as amended, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
 - (ii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by the Province;
 - (iii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), Contracting Authority has the requisite power, authority and capacity to perform its obligations under this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (iv) IO has obtained all necessary approvals to enter into this Project Agreement as agent for the Province;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Contracting Authority and constitutes a legal, valid, and binding obligation of Contracting Authority, enforceable against Contracting Authority in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - (D) Section 11.3 of the *Financial Administration Act* (Ontario);
 - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act* (Ontario); and
 - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act* (Ontario);
- (vi) the execution, delivery, and performance by Contracting Authority of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) the *Ontario Infrastructure and Lands Corporation Act*, 2011 (Ontario), as amended, or any regulations made in respect thereof;
 - (B) the *Executive Council Act* (Ontario);
 - (C) any Applicable Law; or
 - (D) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Contracting Authority Event of Default has occurred and is continuing;
- (viii) Contracting Authority has rights of use and access to, on and over the Site, the Existing Facilities and the Facility or has the requisite power to obtain such rights that are sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1;

- (ix) except with respect to any Lands described in Schedule 35 – Site for which the registered owner is a third party, Her Majesty The Queen in Right of Ontario is the registered owner of, and has good title in fee simple to, the Site (subject only to the Title Encumbrances); and
- (x) the contemplated uses of the Facility are permitted by the existing official plan and zoning.

6. BACKGROUND INFORMATION

6.1 Review of Background Information

- (a) Without limiting any of Project Co’s rights under Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) conducted its own review, due diligence and analysis of the Background Information in accordance with Good Industry Practice (which, for clarity, does not include any Project Co Site Inspections);
 - (ii) satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (iii) identified and raised, prior to the Technical Reference Date, any and all ambiguities or issues requiring clarification associated with the Background Information (including with the Technical Reports).

6.2 No Warranty for Background Information

- (a) Except as expressly provided in Sections 6.4, 16.2, 16.3, 16.4 and 16.5, neither Contracting Authority nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Contracting Authority nor any Province Person warrants that the Background Information represents all of the information in its possession or control (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents.

6.3 No Claims or Liability in Respect of Background Information

- (a) Except as expressly provided in Sections 6.4, 16.2, 16.3, 16.4 and 16.5, none of Contracting Authority or any Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not claim for, or seek to recover from Contracting Authority or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise, including any claim for extensions of time or for additional payments under this Project Agreement):
 - (i) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party;
 - (ii) as a result of any claim that the Background Information was incorrect, inaccurate, incomplete, insufficient or unfit for purpose;

- (iii) as a result of any misunderstanding or misapprehension in respect of the use of the Background Information by Project Co or any Project Co Party; or
- (iv) from any failure (whether before, on, or after the execution and delivery of this Project Agreement) by Contracting Authority or any Province Person to:
 - (A) disclose or make available to Project Co or any Project Co Party any information, documents or data; or
 - (B) review or update the Background Information.

6.4 Exceptions

- (a) Contracting Authority agrees that if, at the date of this Project Agreement, except as described in any Background Information or as otherwise expressly disclosed by Contracting Authority or any Province Person or known by Project Co or any Project Co Party, any of the information in the Technical Reports is incorrect or there is relevant information in the possession or control of Contracting Authority that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) Sections 6.2 and 6.3 are not intended to and shall not prohibit Project Co from relying upon information that has been provided by a person who has given Project Co an express written entitlement to rely on that information, provided however, except as set out in Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the information provided by that person. For clarity, except as set out in to Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co's legal recourse with respect to the information provided by the person who provided the express written entitlement to rely on the information shall be against that person and not Contracting Authority or any Province Person.

7. PROJECT DOCUMENTS

7.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same.
- (b) In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to Contracting Authority.
- (c) Upon the written request of Contracting Authority or the Contracting Authority Representative, Project Co will deliver or cause to be delivered to Contracting Authority or the Contracting

Authority Representative a copy of any notices or consents delivered or received by Project Co under any of the Project Documents.

7.2 Ancillary Documents

(a) Project Co shall not:

- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 30.3, 42.5, 56.3 and 57.2, or except to prevent or to cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
- (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of Contracting Authority, whether actual or potential;
- (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of Contracting Authority, whether actual or potential; or
- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of Contracting Authority, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of Contracting Authority, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 56.3.

7.3 Changes to Lending Agreements and Refinancing

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of Contracting Authority, whether actual or potential, unless:
 - (i) such action is a Permitted Borrowing; or

- (ii) such action is a Refinancing, other than a Mandatory Refinancing, effected in accordance with the provisions of Schedule 28 – Refinancing.

7.4 Compliance with Lending Agreements

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

8. CONTRACTING AUTHORITY RESPONSIBILITIES

8.1 General

- (a) Contracting Authority shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that Contracting Authority shall not be under any obligation to perform any of Project Co’s obligations under this Project Agreement; and
 - (iii) perform or cause to be performed the Contracting Authority FM Services in accordance with Good Industry Practice and any performance standards to be established by the Facilities Management Committee pursuant to this Project Agreement.
- (b) During the Operational Term, Contracting Authority and SolGen shall use or permit the use of the Facility for the predominant purpose of the Correctional Complex Activities or any other correctional facility related purpose, and for ancillary uses compatible with the foregoing.
- (c) Contracting Authority shall, and shall cause all Contracting Authority Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Contracting Authority, SolGen or any other Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude IO, as agent for the Province, (or any designate appointed pursuant to Section 60.1) from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Project Co further agrees that, subject to Section 36.1(b) it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of IO, as agent for the Province, (or any designate appointed pursuant to Section 60.1) from time to time.

8.2 Contracting Authority Permits, Licences, Approvals and Agreements

- (a) Contracting Authority shall, at its own cost and risk:

- (i) except as otherwise provided in Appendix 1 – Contracting Authority and Project Co PLAA Responsibility Table of Schedule 1 – Definitions and Interpretation, obtain, maintain, and, as applicable, renew all Contracting Authority Permits, Licences, Approvals and Agreements, which may be required for the performance of the Project Operations; and
 - (ii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Contracting Authority shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may reasonably request and as Contracting Authority may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that, except as otherwise provided in Section 9.4A or Appendix 1 – Contracting Authority and Project Co PLAA Responsibility Table of Schedule 1 – Definitions and Interpretation, Contracting Authority shall not be responsible for obtaining, or for any delay in obtaining, or for the failure of Project Co to obtain, any Project Co Permits, Licences, Approvals and Agreements, unless such delay or failure is caused by any act or omission of Contracting Authority or any Contracting Authority Party. For greater certainty, Contracting Authority shall not be obligated to:
- (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences, Approvals and Agreements; or
 - (ii) automatically grant Project Co Permits, Licences, Approvals and Agreements for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co for such Project Co Permits, Licences, Approvals and Agreements.

9. PROJECT CO RESPONSIBILITIES

9.1 Other Business

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of Contracting Authority, in its sole discretion.

9.2 General

- (a) Project Co shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) perform all Project Operations:
 - (A) in compliance with Applicable Law;

- (B) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
 - (C) so as to satisfy the Output Specifications;
 - (D) in accordance with Good Industry Practice;
 - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of persons and property;
 - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Contracting Authority, or any Province Person to comply with Applicable Law;
 - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Correctional Complex Activities; and
 - (J) in accordance with all other terms of this Project Agreement; and
- (iii) cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority's obligations under this Project Agreement.

9.3 Project Co Parties

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the engagement of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

9.4 Permits, Licences, Approvals and Agreements

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
 - (ii) assume the obligations of Project Co under the Contracting Authority Permits, Licences, Approvals and Agreements as set out in Appendix 1 – Contracting Authority and Project Co PLAA Responsibility Table of Schedule 1 – Definitions and Interpretation, including, without limitation, the administration of all Contracting Authority Security Deposits which are subject to being released and returned to Contracting Authority and the administration of the renewal or replacement of the Contracting Authority Security Deposits if and as required, and Project Co shall cooperate with Contracting Authority and any other person, perform the obligations under the Permits, Licences, Approvals and Agreements for which

Project Co is responsible which are conditions for the release to Contracting Authority of any such Contracting Authority Security Deposits, and take all such necessary actions to have such Contracting Authority Security Deposits released and returned to Contracting Authority;

- (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
 - (iv) provide all security, including all letters of credit, that may be required in connection with any Project Co Permits, Licences, Approvals and Agreements.
- (b) Where any Project Co Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on Contracting Authority or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences, Approvals and Agreements without the prior written consent of Contracting Authority, provided that neither Contracting Authority nor any Province Person shall be responsible for obtaining, amending or renewing or for the failure of Project Co to obtain, amend or renew any Project Co Permits, Licences, Approvals and Agreements. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Province Person by the requirements of any Project Co Permits, Licences, Approvals and Agreements obtained with Contracting Authority's consent under this Section 9.4(b).
- (c) In respect of Section 9.4(a)(ii), Contracting Authority shall: (i) provide Project Co with relevant information and copies of notices received under the applicable Contracting Authority Permits, Licences, Approvals and Agreements and (ii) execute any applications and documents under the applicable Contracting Authority Permits, Licences, Approvals and Agreements, which Applicable Law dictates that only Contracting Authority can execute.
- (d) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Contracting Authority may reasonably request and as Project Co may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Contracting Authority to obtain, maintain or renew any Contracting Authority Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that, except as otherwise provided in Appendix 1 – Contracting Authority and Project Co PLAA Responsibility Table of Schedule 1 – Definitions and Interpretation, Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of Contracting Authority to obtain any Contracting Authority Permits, Licences, Approvals and Agreements, unless such delay or failure is caused by any act or omission of Project Co or any Project Co Party.
- (e) In the event that Contracting Authority agrees or elects, in its sole discretion, to become a party to, or be bound by any Project Co Permit, License, Approval and Agreement following a written request in this regard being made by Project Co to Contracting Authority, then with respect to such Project Co Permit, License, Approval and Agreement, the Parties covenant and agree as follows:
- (i) Contracting Authority covenants and agrees to provide to Project Co a copy of such Project Co Permit, Licence, Approval and Agreement within 60 days of Contracting Authority's receipt of the same;

- (ii) Project Co agrees to and in favour of Contracting Authority:
 - (A) to perform and fulfil the liabilities and obligations (including indemnity obligations) of Contracting Authority under such Project Co Permit, License, Approval and Agreement as if Project Co was an original party thereto in the place and stead of Contracting Authority;
 - (B) to pay any amounts paid, payable, or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permit, License, Approval and Agreement; and
 - (C) to perform, satisfy, discharge and fulfil all obligations (including indemnity obligations), liabilities and indebtedness of or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permit, License, Approval and Agreement;
- (iii) Project Co acknowledges and agrees that any amount paid by Contracting Authority under, pursuant to, in respect of or in connection with such Project Co Permit, License, Approval and Agreement shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of this Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 31.13 to seek payment of such debt due and payable to Contracting Authority by Project Co; and
- (iv) Project Co acknowledges and agrees that Contracting Authority's agreement or election to become a party to, or be bound by such Project Co Permit, License, Approval and Agreement shall not, and shall not be deemed, construed or interpreted to:
 - (A) be an agreement by Contracting Authority that such Project Co Permit, License, Approval and Agreement is, becomes or constitutes a Contracting Authority Permit, License, Approval and Agreement;
 - (B) be a waiver by Contracting Authority of full compliance with, or a waiver by Contracting Authority of any breach of, any of the provisions of this Project Agreement;
 - (C) be any form of forbearance of or to Contracting Authority's right to seek or enforce strict compliance with any of the provisions of this Project Agreement, or the exercise by Contracting Authority of any right, power or remedy that may be available to Contracting Authority under this Project Agreement; or
 - (D) restrict, limit, prejudice or in any other way impair the rights and/or remedies of Contracting Authority under this Project Agreement.

9.4A Listed Project Co PLAAs

- (a) Notwithstanding Section 9.4(a)(i) but subject to Section 9.4A(b), if, prior to the Scheduled Substantial Completion Date, an Issuing Authority fails to issue to Project Co, on or before the expiration of the number of Business Days designated for the applicable Listed Project Co PLAA in Appendix 2 – Listed Project Co PLAAs to Schedule 1 – Definitions and Interpretation (each, a

“**Listed Project Co PLAA Deadline**”), a Listed Project Co PLAA with no terms and conditions or with terms and conditions that are consistent with the Listed Project Co PLAA Requirements, then any delay or additional costs in respect of the Works caused by the circumstances set out in this Section 9.4A(a) shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event, provided that:

- (i) the applicable Project Co Permit, Licence, Approval or Agreement is a Listed Project Co PLAA;
- (ii) Project Co has fulfilled all obligations pursuant to Applicable Law and has fulfilled and complied with all Listed Project Co PLAA Requirements, in each case in accordance with any deadline imposed by this Project Agreement or an Issuing Authority, including providing timely and thorough responses to questions or concerns posed by such Issuing Authority in respect of the Listed Project Co PLAA;
- (iii) Project Co has submitted a complete Listed Project Co PLAA application to the applicable Issuing Authority;
- (iv) Project Co has submitted the application for the applicable Listed Project Co PLAA in accordance with the timing for such submission in:
 - (A) the Works Schedule, Revised Works Schedule, Recovery Schedule or the Progress Works Schedule most recently delivered prior to the submission of the application for the applicable Listed Project Co PLAA, as applicable; and
 - (B) the Look-ahead Schedule most recently delivered prior to the submission of the applicable application; and
- (v) Project Co’s application for the Listed Project Co PLAA and Project Co’s responses to all questions or concerns posed by an Issuing Authority were in accordance with Good Industry Practice.

For clarity, if an Issuing Authority rejects an application for a Listed Project Co PLAA on the basis that it is incomplete or deficient, the Listed Project Co PLAA Deadline shall be re-determined based upon the date the Issuing Authority is in receipt of a revised and complete application for the Listed Project Co PLAA.

- (b) For greater certainty, Section 9.4A(a) does not entitle Project Co to a Delay Event or a Compensation Event,
 - (i) in the event that an Issuing Authority has issued the Listed Project Co PLAA on or before the applicable Listed Project Co PLAA Deadline, but has attached to the Listed Project Co PLAA terms and conditions that are consistent with the Listed Project Co PLAA Requirements but may be unfavourable to Project Co or that Project Co disagrees with;
 - (ii) in the event that an Issuing Authority fails to issue to Project Co a Permit, Licence, Approval or Agreement that is not explicitly identified as a Listed Project Co PLAA;

- (iii) with respect to Permits, Licences, Approvals and Agreements that are related to, but not explicitly included on, the Listed Project Co PLAAs; or
- (iv) if Project Co fails to comply with any of its obligations as set out in Section 9.4B, including the delivery of any Notice by the date that is one Business Day following the applicable date set out in Section 9.4(B)(a).

9.4B Listed Project Co PLAA Notices

- (a) Project Co shall deliver Notice to Contracting Authority setting out the detailed status of each outstanding Listed Project Co PLAA on each of the following milestones:
 - (i) the date on which 50% of the number of Business Days designated for the applicable Listed Project Co PLAA as set out in Appendix 2 – Listed Project Co PLAAs to Schedule 1 – Definitions and Interpretation have expired;
 - (ii) the date on which 75% of the number of Business Days designated for the applicable Listed Project Co PLAA as set out in Appendix 2 – Listed Project Co PLAAs to Schedule 1 – Definitions and Interpretation have expired;
 - (iii) the date that is five Business Days prior to the Listed Project Co PLAA Deadline for the applicable Listed Project Co PLAA as set out in Appendix 2 – Listed Project Co PLAAs to Schedule 1 – Definitions and Interpretation; and
 - (iv) the Listed Project Co PLAA Deadline for the applicable Listed Project Co PLAA as set out in Appendix 2 – Listed Project Co PLAAs to Schedule 1 – Definitions and Interpretation.
- (b) Each of the Notices that Project Co is required to deliver pursuant to Section 9.4B(a) shall contain accurate information as to the status of the applicable Listed Project Co PLAA.

9.5 Safety During the Works Phase

- (a) From Financial Close until the Final Completion Date, Project Co shall:
 - (i) comply with the Contractor Site Specific Safety Manual;
 - (ii) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons at the Site and in the Facility and in the immediate vicinity of the Site;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or creatures not entitled to be there;
 - (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (v) with respect to the Works, cause a COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, to

perform, all of the obligations of the “constructor”, and indemnify Contracting Authority and each Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;

- (vi) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
 - (vii) cause the Construction Contractor to deliver at least one copy of the Contractor Site Specific Safety Manual to the Site no later than the first Business Day following Financial Close (or such other date as may be agreed by the Parties) and maintain the Contractor Site Specific Safety Manual (as it may be amended by the Construction Contractor from time to time) at the Site until the Final Completion Date.
- (b) At any time that the Works are being carried out in or around any Existing Facilities, Project Co shall at all times:
- (i) ensure that the Works comply with all safety requirements set out in the Project Agreement, including those set out in Section 9.5(a) above; and
 - (ii) keep the Facility and the Existing Facilities in a safe and orderly state, as appropriate and in accordance with Good Industry Practice to avoid any danger to any person at the Existing Facilities, including any Province Person, Inmate, Visitor or other person at the Existing Facilities, that could arise as result of, in connection with or in respect of the Works.

9.6 Additional Works

- (a) Contracting Authority reserves the right to carry out Additional Works. Contracting Authority may assign to Project Co responsibility for:
- (i) directing the methods and means of construction of the Additional Works;
 - (ii) coordinating and scheduling the Additional Works; and/or
 - (iii) providing safety training in respect of the Additional Works.
- (b) In connection with the Additional Works, Contracting Authority shall:
- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), cause Additional Contractors to comply with the instructions of Project Co relating to the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works;
 - (ii) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site;
 - (iii) enter into separate contracts with Additional Contractors containing terms and provisions which: (A) are consistent with the terms and provisions of this Project Agreement (including Schedule 27 – Dispute Resolution Procedure); (B) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to

Section 9.6(a), require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works; and (C) require Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site;

- (iv) ensure that insurance coverage is provided in respect of the Additional Works as would be required by a prudent owner similarly situated and that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works and the Project Co Services to provide seamless insurance coverage to Project Co and Contracting Authority (including, if appropriate, naming Contracting Authority, Project Co and the applicable Project Co Parties as additional insureds and/or loss payees) and in any event, such insurance shall provide for commercial general liability insurance of not less than \$[REDACTED]; and
 - (v) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall:
- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), and subject to the performance by Contracting Authority of its obligations under Sections 9.6(b)(i) and (iii), direct the methods and means of construction of the Additional Works, coordinate and schedule the Additional Works with the Works and/or the Project Co Services to be performed under this Project Agreement, as applicable, and provide safety training in respect of the Additional Works;
 - (ii) subject to the performance by Contracting Authority of its obligations under Sections 9.6(b)(ii) and (iii), assume or cause a Project Co Party to assume overall responsibility for compliance by the Additional Contractors and Additional Works with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act* (Ontario) in accordance with such Act and Section 9.5(a)(v) prior to Substantial Completion and, at the request of Contracting Authority exercised in a manner consistent with the said Act, at any time that Project Co or any Project Co Party is acting as a ‘constructor’ on the Site following Substantial Completion;
 - (iii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
 - (iv) participate with Contracting Authority and Additional Contractors in reviewing their construction schedules when directed to do so by Contracting Authority; and
 - (v) where all or part of the performance of the Works or Project Co Services is affected by, or depends upon, the completion and/or proper execution of the Additional Works, promptly, and prior to proceeding with the affected Works and/or the applicable Project Co Services, report to Contracting Authority in writing any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies.
- (d) If, in respect of Additional Works carried out prior to Substantial Completion:

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- (i) any Additional Contractors cause any damage to the Works;
- (ii) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), Project Co incurs any additional costs or there is any delay in the Works as a result of any Additional Contractors not complying with the instructions of Project Co regarding methods and means of construction, coordination, and scheduling or safety; or
- (iii) Project Co incurs any additional costs or there is any delay in the Works as a result of any such Additional Works,

then, provided such delay in the Works or additional costs is not as a result of Project Co's failure to perform its obligations under Sections 9.6(c) or any act or omission of Project Co or a Project Co Party, any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with by negotiation, adjudication and/or arbitration in a reasonably similar manner as to what is contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors are subject to binding reciprocal obligations in the contracts between Contracting Authority and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with Contracting Authority contains a binding reciprocal agreement to arbitrate.
- (f) In connection with the Additional Works, Project Co may propose a Variation as follows:
 - (i) Project Co shall have a period of 10 Business Days following Notice from Contracting Authority of Contracting Authority's intention to carry out such Additional Works including a reasonable description of such Additional Works to propose a Variation if such Additional Works are (A) reasonably expected to void a warranty in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, or (B) reasonably expected to have a material negative effect on Project Co's ability to perform any of the Project Operations, including a material delay in the Works or material additional costs in respect of the Works;
 - (ii) if Project Co has proposed a Variation in accordance with Section 9.6(f)(i), Contracting Authority shall, within 10 Business Days of such proposal, either issue a Variation Enquiry or give Notice to Project Co that it does not agree that a Variation is required;
 - (iii) either Party may refer the question of whether a Variation is required pursuant to Section 9.6(f)(i) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iv) where Contracting Authority has, under Section 9.6(f)(ii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:

- (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.6(f)(i)) or will not result in any material negative effect (including material additional costs) on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective obligations under this Project Agreement, use commercially reasonable efforts to mitigate any adverse effects of such Additional Works, including, with respect to any void or voidable warranty and any increase in costs arising therefrom.
- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under this Project Agreement with respect to the Works, except to the extent Project Co is entitled to a Delay Event in accordance with Section 9.6(d) or as expressly described in any Variation Confirmation.

9.7 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, Contracting Authority shall not be responsible for the presence on or around the Site or the Lands, or any other interference affecting the Site or the Lands, the Facility or the Project Operations, of any persons participating in civil disobedience, demonstration or protest action ("**Protesters**") or any other persons otherwise not entitled to be on or around the Site or the Lands ("**Trespassers**"). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Site or the Lands shall not be a breach of the obligation of Contracting Authority to grant licence rights of use and access to Project Co on and over the Lands pursuant to Section 14.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co prior to Substantial Completion and of Contracting Authority following Substantial Completion (in each case to the extent same is not otherwise the responsibility of the Police Service). If at any time prior to Substantial Completion any part of the Site or the Lands is occupied, or access to the Site or the Lands is prevented or interfered with, by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the Contracting Authority Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site or the Lands, provided that if Project Co does so elect to exercise any such legal remedy, Project Co shall give the Contracting Authority Representative not less than 24 hours' Notice prior to commencing any legal proceeding for that purpose (except in a case of emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:
 - (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the

manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and

- (ii) Project Co shall not by virtue of this Section 9.7(b) be prevented from entering into *bona fide* settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (c) Project Co may request the assistance of Contracting Authority (at the cost of Project Co) prior to Substantial Completion to remove Protesters or Trespassers where Project Co demonstrates to Contracting Authority's reasonable satisfaction that:
- (i) it is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Project Operations that Project Co is unable to mitigate.

Following such request, Contracting Authority shall notify Project Co whether Contracting Authority can lawfully provide any assistance in relation to the removal of the Protesters or Trespassers that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, Contracting Authority shall provide such assistance (at the cost of Project Co) to the extent it is, in the discretion of Contracting Authority, reasonable and appropriate in the circumstances to do so.

9.8 Minimize Disturbance and Works at Existing Facilities

- (a) Project Co recognizes and understands that the Existing Facilities, as government facilities, are subject to a highly regulated legal and operating environment. Project Co acknowledges that in addition to the use of Good Industry Practice, this Project Agreement includes requirements as to the manner in which the Works are to be performed in order to minimize disturbance to the Existing Facilities that are at any time following the date of this Project Agreement being used or occupied by Contracting Authority, any Province Person, any Visitor, any Inmate or any other person at the Existing Facilities, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Works which are to be carried out at such Existing Facilities and in respect of those portions of the Works where connections are being made to such Existing Facilities. In addition, Project Co acknowledges that, to the extent possible, it has familiarized itself with the facilities and/or building operations of the Existing Facilities that are being used or occupied by Contracting Authority, any Province Person, any Visitor, any Inmate or any other person at the Existing Facilities and will perform the Works taking into account the requirements of Contracting Authority to maintain normal facility and/or building operations of such Existing Facilities. Project Co further acknowledges that the cost to it of performing the Works as set out in the Financial Model includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.
- (b) Project Co recognizes that the Works include the renovation of existing buildings or structures or the addition of structural elements to existing buildings or structures and that the carrying on of the

Correctional Complex Activities during construction is a priority for Contracting Authority, and acknowledges that it has reviewed the Project Agreement, the Project Documents and the Background Information. Project Co shall use all methods required to comply with the requirements set out in this Project Agreement during the performance of the Works. Project Co shall fully cooperate with Contracting Authority in complying with such requirements during the performance of the Works. No costs incurred by Project Co as a result of complying with such requirements shall entitle Project Co to request or form the basis for a claim for a Variation, additional compensation or damages.

- (c) Project Co acknowledges that the Project Agreement includes the Site Requirements and other specifications which include requirements respecting the access to and use of the Existing Facilities and procedures related thereto. Project Co acknowledges having read and understood such requirements and agrees to comply with the procedures set out therein. Project Co shall be responsible for any costs and expenses resulting from its failure to comply with such requirements and procedures.

9.9 COR Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,
- (A) use best efforts to obtain its COR Certification no later than 18 months following Financial Close. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 9.9 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such 18 month period, then Contracting Authority shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days, and
- (B) maintain in good standing and, as applicable, renew its ISO 45001 Accreditation until such time as the COR-Qualified Construction Project Co Party has obtained its COR Certification;
- (ii) once the COR-Qualified Construction Project Co Party is certified (hereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
- (iii) comply with all requirements of its ISO 45001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:

- (i) a COR-Qualified Construction Project Co Party fails to obtain its COR Certification in accordance with this Project Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party not using best efforts to obtain such certification and Contracting Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party has failed to obtain its COR Certification in accordance with this Project Agreement;
- (ii) a COR-Qualified Construction Project Co Party fails to maintain its ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement;
- (iii) a COR-Certified Construction Project Co Party fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement;

(each, an “**H&S Certification Default Event**”);
- (iv) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Qualified Construction Project Co Party will fail to maintain its ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
- (v) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Certified Construction Project Co Party will fail to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of an H&S Certification Default Event, notify Contracting Authority that an H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to Contracting Authority Representative a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification or ISO 45001 Accreditation, as the case may be;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to have the COR Certification or ISO 45001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority;

- (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 13.1(i); and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 13.1(l), if required, or
- (vii) within 5 Business Days of receipt of the Notice from Contracting Authority under Section 9.9(b)(iv) or (v)
- (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification or ISO 45001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to ensure that the COR Certification or ISO 45001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and H&S Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority;
 - (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 13.1(i), and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 13.1(l), if required.

9.10 Demolition Requirements

- (a) Without limiting Project Co’s obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each Project Co Party that is performing any part of the Demolition to, at such person’s own cost and risk and at all times during the performance of the Works:
 - (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
 - (ii) ensure that all persons having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a “**Demolition Supervisor**”);
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and

- (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any Project Co Party:
 - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);
 - (B) at all times when a Complex Structure Demolition is being performed, that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
 - (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition.

(collectively, the “**Demolition Requirements**”).

- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives notice from Contracting Authority or any Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”),

Project Co shall and shall cause any applicable Project Co Party to:

- (i) immediately upon the occurrence of a Demolition Default Event, notify Contracting Authority that a Demolition Default Event has occurred, unless Contracting Authority was the person that provided notice of the Demolition Default Event;
- (ii) cease all work in respect of such Demolition; and
- (iii) within 5 Business Days of receipt of a notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be

necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority.

- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
- (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

9.11 Protection of Works and Property

- (a) Project Co shall protect the Works and the property of Contracting Authority and the Province Persons at the Site, including the Existing Facilities, from damage which may arise as a result of Project Co's activities under this Project Agreement, and shall be responsible for such damage, except for any damage which is caused or contributed to by an act or omission of Contracting Authority or a Province Person.
- (b) Should Project Co, in the performance of this Project Agreement, damage the Works or the property of Contracting Authority or a Province Person at the Lands, including the Existing Facilities, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Works or the property of Contracting Authority or a Province Person at the Lands, including the Existing Facilities, for which Project Co is not responsible, as provided in Section 9.11(a), Project Co shall Make Good such damage to the Works and, if Contracting Authority so directs, to the property of Contracting Authority or such Province Person and, subject to and in accordance with Schedule 22 – Variation Procedure, such work to Make Good such damage to the Works and, if Contracting Authority so directs, to the property of Contracting Authority or such Province Person by Project Co shall result in a Variation.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to the Existing Facilities or other adjoining property without first consulting Contracting Authority and receiving written instructions as to the course of action to be followed.
- (e) Notwithstanding Section 9.11(d), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.

9.12 Pandemic and Epidemic Plans

- (a) Project Co shall implement and comply with the Pandemic and Epidemic Response and Mitigation Plan. All updates to the Pandemic and Epidemic Response and Mitigation Plan shall be subject to review by Contracting Authority pursuant to Schedule 10 - Review Procedure.

- (b) In the event that a specific pandemic or epidemic (including the COVID-19 pandemic or any subsequent outbreak of COVID-19) is reasonably foreseeable and likely to occur and affect the Project Operations or otherwise occurs and affects the Project Operations, Project Co shall, at its cost, promptly (at the request of Contracting Authority or on its volition) update the Pandemic and Epidemic Response and Mitigation Plan on a monthly basis and submit each update with the next Works Report or, following the Final Completion Date, with the next Performance Monitoring Report, until such time as the Parties agree, acting reasonably, that either the pandemic or epidemic will not occur and affect the Project Operations or such epidemic or pandemic has ended, no longer affects the Project Operations and no further updates to such plan are required. Following the review by Contracting Authority of each updated Pandemic and Epidemic Response and Mitigation Plan pursuant to Schedule 10 - Review Procedure, Project Co shall, without limiting any other obligation of Project Co under the Project Agreement or Applicable Law, implement such plan in accordance with Schedule 10 - Review Procedure, at its cost and risk other than as provided for in Section 35.4 and Section 40.1(a)(viii).
- (c) Any Pandemic and Epidemic Response and Mitigation Plan (including any update thereto) or the potential or actual impact of any pandemic or epidemic on the Project Operations may, at the request of a Party, be discussed at any meeting of the Works Committee or Facilities Management Committee, as applicable, or at any other meeting between the Parties reasonably requested by a Party during the Project Term. Any Party may, acting reasonably, require that any such other meeting be on a "without prejudice basis".
- (d) Nothing required pursuant to this Section 9.12 in relation to the Pandemic and Epidemic Response Mitigation Plan shall in any way obviate or detract from Project Co's right to relief under this Project Agreement in relation to a Pandemic and Epidemic Change in Law or a Pandemic and Epidemic Supply Chain Delay.

9.13 Anti-Racism and Anti-Discriminatory Processes, Policies and Procedures

- (a) Project Co shall, and shall cause the Equity Provider, the Construction Contactor and the Service Provider to each, incorporate reasonable processes, policies, controls and procedures to safeguard its ongoing commitment to Anti-Racism, anti-discrimination and anti-harassment practices, including the imposition of requirements obligating Subcontractors to demonstrate and maintain a commitment to Anti-Racism, anti-discrimination and anti-harassment practices under their Subcontracts.
- (b) Contracting Authority may, in its sole discretion from time to time, require Project Co to, at its sole cost and expense, cause the obtainment of a third party attestation from a reputable, independent consulting firm with expertise in equity and diversity proposed by Contracting Authority or otherwise approved by Contracting Authority, acting reasonably, regarding the presence and design of the internal processes, policies, controls and procedures of Project Co, the Equity Provider, the Construction Contactor and the Service Provider, establishing and maintaining a corporate commitment to providing opportunities for equity-deserving groups, including Black, Indigenous and racialized communities and eliminating workplace hate and intolerance.
- (c) Project Co shall, and shall cause the Equity Provider, the Construction Contactor and the Service Provider to each, take reasonable proactive measures to monitor for and prevent the occurrence of racism, discrimination and harassment (including Systematic Racism and other forms of racial discrimination and harassment), and respond in a prompt and appropriate manner when any issue of racism, discrimination or harassment arises in its work environment, in order to maximize the

likelihood that its work environment is and remains free from racism, discrimination and harassment.

10. REPRESENTATIVES

10.1 The Contracting Authority Representative

- (a) Subject to the limitations set out in Section 10.1(d), the Contracting Authority Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the Contracting Authority Representative and such other functions and powers of Contracting Authority under this Project Agreement as Contracting Authority may notify Project Co from time to time.
- (b) Contracting Authority may, from time to time by written notice to Project Co, change the Contracting Authority Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no Contracting Authority Representative has been appointed, or when the Contracting Authority Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Contracting Authority Representative's functions under this Project Agreement, Contracting Authority shall perform or may, by written notice to Project Co, promptly appoint an alternative Contracting Authority Representative to perform the functions which would otherwise be performed by the Contracting Authority Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative Contracting Authority Representative which is permitted by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The Contracting Authority Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the Contracting Authority Representative which is authorized by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of Contracting Authority.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to Contracting Authority, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise

be performed by the Project Co Representative, provided that, Project Co must seek Contracting Authority's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the Contracting Authority Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Part A of Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that the persons identified in Part A of Schedule 9 – Key Individuals remain involved in the Works in the capacity set out in Part A of Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of Contracting Authority acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) Subject to the following sentence of this Section 10.4(b), the individuals who are critical to the performance of the Project Co Services are identified in Part B of Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that persons identified or to be identified in Part B of Schedule 9 – Key Individuals remain involved in the Project Co Services in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Project Co Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of Contracting Authority, acting reasonably, such involvement would have a material adverse effect on the Project Co Services.
- (c) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of Contracting Authority, which

consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

- (d) If Contracting Authority determines, acting reasonably, that it is in the best interests of Contracting Authority that any individual identified in Schedule 9 – Key Individuals be replaced, Contracting Authority shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days after receipt by Project Co of such notice, Project Co shall provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of Contracting Authority, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
 - (i) 3 representatives appointed by SolGen from time to time;
 - (ii) the following 3 representatives appointed by Contracting Authority:
 - (A) the Contracting Authority Representative; and
 - (B) 2 other representatives appointed by Contracting Authority from time to time; and
 - (iii) the following 3 representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) 1 representative of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier shall be required to attend meetings as a non-voting member of the Works Committee. The Design Conformance Consultant shall be entitled to, but not required to, attend meetings as a non-voting member of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The Contracting Authority Representative shall be the chairperson of the Works Committee.

11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Facilities Management Committee and the Equipment Steering Committee as and when required.

- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
 - (ii) the Project Schedules;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) the recommendations of the Transition Subcommittee;
 - (vii) any special matters referred to the Works Committee by Contracting Authority, SolGen or Project Co;
 - (viii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 11.6;
 - (ix) any community and media relations issues in accordance with Schedule 18 – Communications;
 - (x) monitoring the Final Commissioning Program; and
 - (xi) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
 - (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

11.3 Term of Works Committee

- (a) Unless otherwise agreed, the Works Committee shall operate only until the Final Completion Date.

11.4 Replacement of Committee Members

- (a) Contracting Authority and SolGen shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of Contracting Authority.

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons (other than members of the Works Committee) as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative, the Contracting Authority Representative and any of SolGen's representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, the Existing Facilities or another location in the City of Thunder Bay, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as to permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Two representatives of Contracting Authority (one of whom shall be the Contracting Authority Representative), two representatives of Project Co (one of whom shall be the Project Co Representative) and two representatives of SolGen shall constitute a quorum at any meeting of the

Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.

- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Contracting Authority. Contracting Authority shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies Contracting Authority within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, Contracting Authority and SolGen shall be deemed to have approved such minutes. Contracting Authority shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Project Co during regular business hours.

11.6 Proceeding at Risk

- (a) If at any time prior to Final Completion:
- (i) the Contracting Authority Representative has noted a Critical Non-Conformance in respect of the Works; or
 - (ii) the Contracting Authority Representative has noted a Works Submittal as “CRITICAL NON-CONFORMANCE” in accordance with Schedule 10 – Review Procedure (each of the matters described in clauses (i) and (ii) of this Section 11.6(a) (a “**Proceeding at Risk Matter**”));

then Contracting Authority may issue to Project Co (with a copy to the Independent Certifier and the CDB) a notice (the “**Proceeding at Risk Notice**”) identifying Contracting Authority’s reasons for issuing the Proceeding at Risk Notice and requesting Project Co to deliver any relevant Design Data and any other information reasonably required by Contracting Authority from Project Co to review the Proceeding at Risk Matter.

- (b) Following the issuance of a Proceeding at Risk Notice, the Contracting Authority Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding at Risk Matter.
- (c) Following the issuance of a Proceeding at Risk Notice, Contracting Authority may, in its sole discretion, give notice to the Lenders’ Agent pursuant to Section 13 of the Lenders’ Direct Agreement of the Proceeding at Risk Matter, together with a copy of the Proceeding at Risk Notice.
- (d) Following the issuance of a Proceeding at Risk Notice, either Party may refer the Proceeding at Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) Nothing set out in this Section 11.6 or in a Proceeding at Risk Notice or any act undertaken by a Party or omission of a Party pursuant to this Section 11.6, shall relieve Project Co of the risk and responsibility for the Works under this Project Agreement and for meeting all of Project Co’s obligations under and satisfying all requirements of this Project Agreement, and no such notice, act or omission shall create any new or additional obligations or liabilities for Contracting Authority under this Project Agreement.

12. FACILITIES MANAGEMENT COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than the earlier of (i) 18 months prior to the Scheduled Substantial Completion Date, or, (ii) such earlier date as requested by Contracting Authority, acting reasonably, establish a committee (the “**Facilities Management Committee**”) consisting of:
- (i) 3 representatives appointed by Contracting Authority from time to time;
 - (ii) 2 senior representatives of SolGen appointed by SolGen from time to time; and
 - (iii) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative, and the other shall be appointed by Project Co from time to time.
- (b) Members of the Facilities Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Facilities Management Committee.
- (c) 1 of the representatives of Contracting Authority shall be the chairperson of the Facilities Management Committee.

12.2 Function and Role

- (a) The Facilities Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Facilities Management Committee shall interface with the Works Committee and the Utilities Management Subcommittee as and when required.
- (b) The Facilities Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Works), both prior to and during the Operational Term, including:
- (i) the transition from the Existing Facilities to the Facility;
 - (ii) any joint review of the Project Co Services and the Output Specifications;
 - (iii) any issues raised by and the recommendations of the Utilities Management Subcommittee;
 - (iv) any changes to Service Quality Plans;
 - (v) any performance issues;
 - (vi) the development and modification of any required performance standards for the Contracting Authority FM Services, which performance standards shall be based on Good Industry Practice;
 - (vii) any interface issues between the Project Co Services and the Contracting Authority FM Services;

- (viii) any special matter referred to the Facilities Management Committee by Contracting Authority, SolGen or Project Co;
 - (ix) any community and media relations issues in accordance with Schedule 18 – Communications;
 - (x) the review of Performance Monitoring Reports, Payment Adjustment Reports and Monthly Energy Reports;
 - (xi) each Payment Mechanism Technical Review; and
 - (xii) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Facilities Management Committee shall be final and binding on the Parties. If the Facilities Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Facilities Management Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co’s ability to perform the Project Co Services or SolGen’s ability to perform the Correctional Complex Activities;
 - (iv) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement;
 - (v) any Performance Monitoring Report, Payment Adjustment Report or Monthly Energy Report; or
 - (vi) any Payment Mechanism Technical Review.
- (e) Without limiting any right of Contracting Authority (including pursuant to Section 31.6(k), Section 31.9 and Part E of Schedule 20 – Payment Mechanism) or obligation of Project Co under this Project Agreement, at each meeting of the Facilities Management Committee following Substantial Completion:
- (i) a representative of Project Co on the Facilities Management Committee shall present the Performance Monitoring Report, Payment Adjustment Report and Monthly Energy Report in respect of the Payment Period just ended to the representatives of Contracting Authority and SolGen on the Facilities Management Committee;
 - (ii) Contracting Authority shall, following such presentation, provide comments to Project Co, if any, on such Performance Monitoring Report, Payment Adjustment Report and Monthly

Energy Report, including with respect to any errors or omissions in such reports that Contracting Authority has identified; and

- (iii) the Facilities Management Committee shall discuss the Performance Monitoring Report, Payment Adjustment Report and Monthly Energy Report and such comments from Contracting Authority on such reports, if any, and, subject to Section 12.2(d), may propose solutions to any issues identified with respect to such reports.

12.3 Replacement of Committee Members

- (a) Each of Contracting Authority and SolGen shall be entitled to replace any of their respective representatives on the Facilities Management Committee by written notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver and to cause SolGen to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Facilities Management Committee with the prior written consent of Contracting Authority.

12.4 Procedures and Practices

- (a) The members of the Facilities Management Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Facilities Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Facilities Management Committee such other persons as the members of the Facilities Management Committee may agree;
 - (iii) exclude from any meeting of the Facilities Management Committee such persons as the members of the Facilities Management Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Facilities Management Committee.
- (b) Once established, the Facilities Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Facilities Management Committee or the Parties.
- (c) Any member of the Facilities Management Committee may convene a special meeting of the Facilities Management Committee at any time. Special meetings of the Facilities Management Committee may be convened on not less than 5 Business Days' notice to all members of the Facilities Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Facilities Management Committee, the Facilities Management Committee shall meet at the Facility or another location in the City of Thunder Bay, Ontario. Meetings of the Facilities Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided

that each member of the Facilities Management Committee must attend in person at least once each calendar quarter.

- (e) For the period from the establishment of the Facilities Management Committee until the Substantial Completion Date, 2 representatives of Contracting Authority, 1 representative of Project Co and 1 representative of SolGen shall constitute a quorum at any meeting of the Facilities Management Committee. For the period from the day after the Substantial Completion Date until the Termination Date, 1 representative of SolGen, 1 representative of Contracting Authority and 1 representative of Project Co shall constitute a quorum at any meeting of the Facilities Management Committee. A quorum of members may exercise all the powers of the Facilities Management Committee. The members shall not transact business at a meeting of the Facilities Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Facilities Management Committee, including those made by telephone or other form of communication, shall be recorded by Contracting Authority. Contracting Authority shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies Contracting Authority within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, and Contracting Authority shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Facilities Management Committee and shall make such minutes available for inspection by Contracting Authority and SolGen during regular business hours.

13. QUALITY ASSURANCE

13.1 Quality Plans and Systems

- (a) Project Co shall cause all of the Project Operations to be the subject of quality management systems, which shall include the following:
 - (i) a Design Quality Plan and a Construction Quality Plan, which may be incorporated into one document; and
 - (ii) a Service Quality Plan for each Project Co Service,

(collectively, the “**Quality Plans**”).
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications and the Final Commissioning Program.
- (c) The Design Quality Plan is attached as part of Schedule 11A – Design Quality Plan and Construction Quality Plan.
- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11A – Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to Contracting Authority within 60 days following Financial Close.
- (e) The Service Quality Plan for each Project Co Service shall, at a minimum, comply with the requirements of the outline of the Service Quality Plan attached as Schedule 11B – Service Quality

- Plan Outline. Project Co shall submit its proposed Service Quality Plan for each Project Co Service to Contracting Authority not less than 6 months prior to the Scheduled Substantial Completion Date.
- (f) All Quality Plans shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 – Review Procedure.
- (g) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Project Operations in compliance with the Quality Plans, including by causing:
- (i) the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan; and
 - (ii) the Service Provider to implement the Service Quality Plans.
- (h) Where any aspect of the Project Operations is performed by more than one Project Co Party, then this Section 13, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 13 to such Project Co Party, including the Construction Contractor or the Service Provider, shall be construed accordingly.
- (i) Subject to Section 13.1(j), Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 9.9(b)(vi)(C) or 9.9(b)(vii)(C) (each, an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
- (i) be conducted by a Certified H&S Inspector; and
 - (ii) during the performance of the Works, include, at a minimum,
 - (A) a review of general compliance with all applicable Occupational Health and Safety Act (Ontario) requirements, compliance with all safety manuals applicable to sites at which the Works are being conducted, including, but not limited to, the Contractor Site Specific Safety Manual; and
 - (B) a review of the Construction Contractor’s job hazard analysis documentation on any site which could endanger or put at risk the safety of any person working at the Site.
- (j) The first H&S Construction Inspection shall occur no later than the 90th day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (k) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to Contracting Authority and to the Works Committee not more than 5 Business Days from the date on which the H&S Construction Inspection is completed. Any H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works

Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.

- (l) To the extent an H&S Construction Inspection Report discloses any non-compliance by the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, with the terms of the COR Certification or ISO 45001 Accreditation, as the case may be, Contracting Authority shall have the right to require Project Co to cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, at its sole cost and expense:
 - (i) to take any corrective and remedial action required by the H&S Construction Inspection Report to correct any such non-compliance and Project Co shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to comply with all instructions given by the Certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance, and
 - (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each, an “**H&S Construction Re-Inspection**”) within 3 Business Days from the date on which any such request is made by Contracting Authority, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector, and
 - (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than 3 Business Days from the date on which an H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued.

13.2 Changes to Plans

- (a) Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, any changes to any of the Quality Plans required to comply with Section 13.1, and shall amend such Quality Plans as required pursuant to Schedule 10 – Review Procedure.

13.3 Quality Manuals and Procedures

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to Contracting Authority at the time that the relevant Quality Plan, or part thereof or change thereto, is submitted in accordance with Schedule 10 – Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan, or part thereof or change thereto, in accordance with Schedule 10 – Review Procedure.

13.4 Quality Monitoring

- (a) Without limiting Contracting Authority's other rights pursuant to this Project Agreement, including Sections 29 and 34, Contracting Authority may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co's quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that Contracting Authority also has the right to perform periodic monitoring, spot checks and auditing of both the Construction Contractor's and the Service Provider's quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor and the Service Provider to cooperate, with Contracting Authority in monitoring quality management systems and shall provide Contracting Authority with all information and documentation reasonably required in connection with Contracting Authority's rights under this Section 13.4.

14. SITE ACCESS AND INVESTIGATION

14.1 Licence to Site

- (a) Effective from [REDACTED] until the Termination Date and subject to this Section 14, Contracting Authority hereby grants or shall cause to be granted, and shall continuously until the Termination Date grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and the Facility subject to and in accordance with the Site Requirements (which Site Requirements, for clarity, are only applicable during the performance of the Works) as are required by Project Co and such Project Co Parties and sufficient to allow them to perform the Project Operations, except any such rights of use and access set out as a Project Co responsibility to obtain under Appendix 1 – Permits, Licences Approvals and Agreements to Schedule 1 – Definitions and Interpretation, which, for clarity, in each case, Project Co shall be required to obtain following the date of this Project Agreement from each applicable Governmental Authority in accordance with Applicable Law and any other requirements imposed by such Governmental Authority.
- (b) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of Contracting Authority's rights hereunder, in particular and subject to this Section 14.1(c), its rights of use and access to the Site and the Facility prior to Substantial Completion for the purposes of the Contracting Authority Commissioning, Contracting Authority acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and Contracting Authority shall provide access to the Site and the Facility subject to and in accordance with the Site Requirements without material interference by Contracting Authority or any Province Person from the date of Financial Close until the Termination Date.
- (d) Except as may be provided in the Permits, Licences, Approvals and Agreements, none of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of Contracting Authority which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Project Operations.

- (e) Contracting Authority shall provide Project Co with limited access to the Existing Facilities but only to the extent necessary for Project Co to:
- (i) perform its obligations under Section 21 and in relation to the Transition in accordance with this Project Agreement and the Works Schedule;
 - (ii) to comply with the directions of the Equipment Steering Committee and the Transition Subcommittee; or
 - (iii) to comply with its obligations in the Output Specifications,
- provided always that in each case Project Co obtains the prior written consent of Contracting Authority, which may be subject to such reasonable conditions as are imposed by Contracting Authority (which conditions, for greater certainty, shall not materially impede the performance of Project Co's obligations under Section 21 or the Transition in accordance with this Project Agreement and the Works Schedule) or the Output Specifications.
- (f) The licence rights provided in this Section 14.1 shall automatically terminate on the Termination Date.

14.2 Non-Exclusive Licence and Development of Site

- (a) Project Co acknowledges and agrees that the licence rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that Contracting Authority and any person authorized by Contracting Authority, including SolGen, may occupy and possess the Site (including the Existing Facilities) and the Facility without the prior consent of Project Co, including for the purposes of carrying out the Correctional Complex Activities. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Correctional Complex Activities.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that Contracting Authority may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, or dispose of, portions of the Site (including the Existing Facilities) or the Facility. To the extent that such use or development or disposition materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use or development or disposition shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

14.3 Limited Access Areas

- (a) For purposes related to the provision of the Correctional Complex Activities or related to the safety of the users of the Facility, security and confidentiality, effective upon Substantial Completion, Contracting Authority may limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site or the Facility (including the Existing Facilities) unless a person seeking access obtains the prior written consent of Contracting Authority, which consent may be subject to such reasonable conditions as are imposed by Contracting Authority.

14.4 Naming and Signage

- (a) Project Co acknowledges that Contracting Authority reserves and retains (i) all rights to designate the name for the Facility and the Existing Facilities and any part of the Facility and the Existing Facilities; (ii) all rights to signage in relation to the Site, the Facility and the Existing Facilities; and (iii) all rights, Trade-Marks, naming or branding regarding the Facility and the Existing Facilities or any part of the Facility and the Existing Facilities. It is agreed, however, that, with the prior written consent of Contracting Authority, which may take into consideration any applicable governmental guidelines, including the guidelines set out in Schedule 18 – Communications, Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Substantial Completion, erect and maintain signage which may include such parties' logos and trade names identifying their respective roles in connection with the development and construction of the Project.

14.5 No Interest in Land

- (a) Project Co agrees that, in accordance with the principles of the IPFP Framework, none of Project Co, the Project Co Parties or the Lenders shall acquire any estate, right, title or ownership interest in the Site or the Facility or any other interest in the Lands (including the Existing Facilities) pursuant to this Project Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interests in and freehold title to the Site, the Facility and all other portions of the Lands shall at all times remain unencumbered by any interest of Project Co, the Project Co Parties and the Lenders. Project Co, the Project Co Parties and the Lenders shall have access to the Site (including the Existing Facilities) and the Facility under and subject to the licence and access rights granted under this Section 14 and the Lenders' Direct Agreement, respectively.

14.6 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers all or any part of the Site, Contracting Authority shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee, chargee or other encumbrancer of the Site permitting Project Co and the Lenders' Agent to access and use the Site under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee, chargee or other encumbrancer or any person claiming by or through the mortgagee, chargee or other encumbrancer. This Section 14.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Site.

14.7 Changes to the Site

- (a) Notwithstanding any other provision in this Project Agreement, other than Section 14.2(b), the Parties acknowledge and agree that an alteration, addition or variation to or in the Lands or the Site as described in Schedule 35 – Site or to any of the dates by which Contracting Authority grants Project Co access to and use of the Site pursuant to Schedule 35 – Site (if any) shall be effected by way of a Variation, subject to and in accordance with Schedule 22 – Variation Procedure.

14.8 Adequacy of the Site

- (a) Without limiting any of Project Co's rights under Sections 6.4, 14.2(b), 14.7, 16.2, 16.3, 16.4 and 16.5, Project Co acknowledges and agrees that it has and shall be deemed to have satisfied itself as to:
- (i) the adequacy of the Site (including the Existing Facilities), rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its related obligations under this Project Agreement;
 - (ii) the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
 - (iii) the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

14.9 Inspection and Investigation of the Site

- (a) Without limiting any of Project Co's rights under Sections 6.4, 14.2(b), 14.7, 16.2, 16.3, 16.4 and 16.5, Project Co acknowledges and agrees that it has and shall be deemed to have, as of the Technical Submission Deadline, conducted all necessary investigations, inspections and other due diligence of the Site and visual inspections of the Existing Facilities) in accordance with Good Industry Practice, taking into account all matters related to the Site, including the matters set out in Sections 14.10(a)(i) to (iii) existing as of the Technical Submission Deadline (the "**Project Co Site Inspections**").
- (b) Without limiting any of Project Co's rights under Sections 6.4, 14.2(b), 14.7, 16.2, 16.3, 16.4 and 16.5 or its acknowledgement and agreement in Section 14.9, Project Co further acknowledges and agrees that nothing in this Section 14.9 shall relieve Project Co from its obligations, following Commercial Close, to conduct all necessary investigations, inspections and other due diligence at the Site (including, as applicable, at the Facility and the Existing Facilities) in accordance with Good Industry Practice, taking into account all matters related to the Site, including the matters set out in Sections 14.10(a)(i) to (iii) prior to commencing and during the Project Operations or any applicable portion of the Project Operations.

14.10 No Warranty in Respect of the Site

- (a) Except as provided in Sections 6.4, 14.2(b), 14.7, 16.2, 16.3, 16.4 and 16.5 neither Contracting Authority, nor any Province Person gives any warranty or undertaking of any nature whatsoever in respect of the Lands, including:
- (i) the nature or condition of the Site (including the Existing Facilities);
 - (ii) the structures, installations, fixtures, services, works, buildings and other improvements, on, over or under the Site other than the Existing Facilities; or
 - (iii) any Site Conditions.

14.11 No Claims in Respect of the Lands

- (a) Except as expressly provided in Sections 6.4, 14.2(b), 14.7, 16.2, 16.3, 16.4 and 16.5, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the Lands, the Site (including the Existing Facilities) or the Site Conditions, including:
 - (i) the fact that Project Co was not provided any opportunity to inspect the Site prior to the Technical Submission Deadline other than the Project Co Site Inspections;
 - (ii) any claim that the Site is inadequate; or
 - (iii) any claim that incorrect, inaccurate, incomplete or insufficient information on any matter relating to the Lands, the Site or the Site Conditions was given to it by any person, whether or not Contracting Authority or a Province Person.

15. TITLE ENCUMBRANCES**15.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of Contracting Authority, other than:
 - (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of Contracting Authority;
 - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Project Agreement as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;
 - (iii) obligations under any Title Encumbrance which the applicable Governmental Authority may formally relieve or waive, with the consent of Contracting Authority, with respect to any Development Approval; and
 - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for Contracting Authority performing.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part of it, except in accordance with the terms of this Project Agreement.

15.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Lands or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party and has not been consented to in writing by Contracting Authority, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, Contracting Authority will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (c) Upon request by Contracting Authority, Project Co shall perform and deliver to Contracting Authority a subsearch of title on the Lands or any part thereof. Contracting Authority shall pay the reasonable costs of any such search except (i) a search that reveals any Encumbrance that is not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from title to the Lands.

15.3 Construction Act (Ontario)

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made upon or against the Lands pursuant to the Construction Act and shall also apply to claims made against Contracting Authority or the holdback under the Construction Act as though such a claim were an Encumbrance against the Lands as referred to therein.
- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the Construction Act and shall deal with such holdbacks in accordance with the Construction Act.
- (c) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the Construction Act, require that a certificate of completion under Section 33(1) of the Construction Act for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall cause a Payment Certifier to be appointed under the Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Construction Contract in accordance with the Construction Act.
- (e) Project Co shall promptly provide Contracting Authority with a copy of any materials which are provided to the Lenders to evidence compliance with the Construction Act.

16. SITE CONDITION

16.1 Acceptance of the Site and Site Condition

- (a) Project Co agrees to accept the Site (including the Existing Facilities) on an "as is, where is" basis, and shall be responsible for all Site Conditions on, in or under the Site, except in respect of:
- (i) Contamination;
 - (ii) Items of Interest or Value;
 - (iii) Species-at-Risk; and
 - (iv) Other Site Conditions,
- its responsibility for which shall be only as described in Sections 16.2 to 16.5, respectively.
- (b) For greater certainty, except as expressly set out in this Project Agreement, nothing in this Section 16 shall relieve Project Co from performing any of its obligations hereunder (including its obligations under Section 9).

16.2 Contamination

- (a) **"Project Co Contamination"** means any Contamination on, in or under, or migrating to or from, the Site that:
- (i) was within the Project Manager Knowledge as of the Technical Submission Deadline;
 - (ii) was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports and Designated Substance Reports or the Geotechnical Reports as of the Technical Reference Date;
 - (iii) could have been properly inferable, readily apparent or readily discoverable on the basis of Project Co Site Inspections, including the nature and condition of the Site, taking into account all matters relating to the Site, and all other Site Conditions, including the Existing Facilities and other structures, installations, fixtures, services, works, buildings and other improvements on, over and under the Site existing as of the Technical Submission Deadline; or
 - (iv) affects the Lands and was caused or contributed to by Project Co or any Project Co Party.
- (b) **"Contracting Authority Contamination"** means all Contamination on, in or under, or migrating to or from, the Site other than Project Co Contamination.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Contamination.
- (d) Any Contracting Authority Contamination encountered by Project Co:

- (i) prior to Substantial Completion shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; or
 - (ii) after Substantial Completion shall, subject to and in accordance with Section 39, be treated as an Excusing Cause.
- (e) Upon the discovery of any Contamination, Project Co shall immediately inform the Contracting Authority Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and any applicable provisions of this Project Agreement in respect thereof:
- (i) at Contracting Authority's cost subject to and in accordance with Section 16.2(d) in respect of any Contracting Authority Contamination; and
 - (ii) at its own cost in respect of all Project Co Contamination.
- (f) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law or any applicable provisions of this Project Agreement in respect of Contamination, Project Co shall not undertake any significant work pursuant to Section 16.2(e) in respect of any Contracting Authority Contamination until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 16.2(e), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost subject to and in accordance with Section 16.2(h).
- (h) If Section 16.2(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Project Operations or to delay or suspend all or any part of the Project Operations, as a result of any instructions given by Contracting Authority pursuant to Section 16.2(g), and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension, variation, delay or suspension in the Project Operations in accordance with Schedule 22 – Variation Procedure.

16.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on, in or under the Site (collectively the "**Items of Interest or Value**") are or shall be the sole and absolute property of Contracting Authority.
- (b) "**Project Co Items of Interest or Value**" shall mean any Items of Interest or Value that:
 - (i) were within the Project Manager Knowledge as of the Technical Submission Deadline; or
 - (ii) were described in or readily apparent from the Archaeological Reports as of the Technical Reference Date.

- (c) **"Contracting Authority Items of Interest or Value"** means all Items of Interest or Value other than the Project Co Items of Interest or Value.
- (d) Project Co shall be responsible, at its sole cost and expense, for the Project Co Items of Interest and Value.
- (e) Any Contracting Authority Items of Interest or Value encountered by Project Co:
- (i) prior to Substantial Completion shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; or
 - (ii) after Substantial Completion shall, subject to and in accordance with Section 39, be treated as an Excusing Cause.
- (f) Upon the discovery of any Items of Interest or Value, Project Co shall:
- (i) immediately inform the Contracting Authority Representative of such discovery;
 - (ii) take all steps not to disturb the Items of Interest or Value and, if necessary, cease any Project Operations in so far as performing such Project Operations would endanger the Items of Interest or Value or prevent or impede their excavation, take all necessary steps to preserve and ensure the preservation of the Items of Interest or Value in the same position and condition in which it was found, and comply, and ensure that all Project Co Parties comply, with Applicable Law (including all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremation Services Act, 2002* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties* issued under the *Ontario Heritage Act* (Ontario)) and any applicable provisions of this Project Agreement in respect thereof:
 - (A) at Contracting Authority's cost subject to and in accordance with Section 16.3(e) in respect of any Contracting Authority Items of Interest or Value; and
 - (B) at its own cost in respect of any Project Co Item of Interest or Value.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any discovery of any Items of Interest or Value which are in addition to any required pursuant to Section 16.3(f), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost subject to and in accordance with Section 16.3(h).
- (h) If Section 16.3(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Project Operations or to delay or suspend all or any part of the Project Operations, as a result of any instructions given by Contracting Authority pursuant to Section 16.3(g), and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension, variation, delay or suspension in the Project Operations in accordance with Schedule 22 – Variation Procedure.

16.4 Species-at-Risk

- (a) **"Project Co Species-at-Risk"** shall mean any Species-at-Risk which may be found on, in, at, or under:
- (i) the Site that is a Species-at-Risk and the occurrence of which was described (including the location in which it was found) in the following reports, each of which is included in the Background Information:
 - (A) *Existing Conditions and Natural Heritage Features Constraints* (Stantec, October 26, 2017);
 - (B) *Breeding Bird Survey Results* (Stantec, July 23, 2020);
 - (C) *2021 Additional Species at Risk Surveys and Vegetation Characterization Surveys* (Stantec, September 9, 2021); and
 - (D) *Thunder Bay Correctional Centre Redevelopment Project – Bobolink Habitat Management Plan, Final Report* (Stantec, October 5, 2021),as of the Technical Reference Date;
 - (ii) the Lands, the occurrence of which is caused or contributed to by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement (but only to the extent of such cause or contribution); or
 - (iii) the Lands and is a new population of Species-at-Risk in any location at the Lands caused by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement and which resulted in the creation of conditions deemed suitable habitat for Species-at-Risk in accordance with Applicable Law.
- (b) **"Contracting Authority Species-at-Risk"** shall mean any Species-at-Risk which may be found on, in, at, or under the Site other than Project Co Species-at-Risk.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Species-at-Risk.
- (d) Any Contracting Authority Species-at-Risk encountered by Project Co:
- (i) prior to Substantial Completion shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; or
 - (ii) after Substantial Completion shall, subject to and in accordance with Section 39, be treated as an Excusing Cause.
- (e) Upon the discovery of any Species-at-Risk, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and any applicable provisions of the Project Agreement in respect thereof (including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk):

- (i) at Contracting Authority's cost subject to and in accordance with Section 16.4(d) in respect of Contracting Authority Species-at-Risk; and
 - (ii) at its own cost in respect of Project Co Species-at-Risk.
- (f) In the event that Contracting Authority wishes Project Co to perform any actions in respect of Species-at-Risk which are in addition to any required pursuant to Section 16.4(e), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost subject to and in accordance with Section 16.4(g).
- (g) If Section 16.4(f) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Project Operations or to delay or suspend all or any part of the Project Operations, as a result of any instructions given by Contracting Authority pursuant to Section 16.4(f), and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension, variation, delay or suspension in the Project Operations in accordance with Schedule 22 – Variation Procedure.

16.5 Differing Other Site Conditions

- (a) **"Project Co Other Site Condition"** means any Other Site Condition that:
- (i) was within the Project Manager Knowledge as of the Technical Submission Deadline;
 - (ii) was described in, or was properly inferable, readily apparent or readily discoverable from:
 - (A) any of the Technical Reports; or
 - (B) any of the following:
 - (I) TULLOCH ENGINEERING THUNDER BAY CORRECTIONAL Report Subsurface Utility Engineering Services, Project #61001150, dated December 15, 2017, prepared for Tulloch Engineering and Infrastructure Ontario by T2 Utility Engineers Inc.;
 - (II) TULLOCH ENGINEERING THUNDER BAY ADDITIONAL WORK Report Subsurface Utility Engineering Services Project #61001273, dated August 1, 2018, prepared for Tulloch Engineering and Infrastructure Ontario by T2 Utility Engineers Inc.;
 - (III) TULLOCH ENGINEERING THUNDER BAY ADDITIONAL WORK Report Subsurface Utility Engineering Services Project #61001273, dated October 2, 2020, prepared for Tulloch Engineering and Infrastructure Ontario by T2 Utility Engineers Inc.;
 - (IV) TULLOCH ENGINEERING IO 19-154 THUNDER BAY CORRECTIONAL Report Subsurface Utility Engineering Services Project #61001618, dated December 13, 2019, prepared for Tulloch Engineering and Infrastructure Ontario by T2 Utility Engineers Inc.;

- (V) TULLOCH ENGINEERING IO 20-AB10 THUNDER BAY EXTENDED AREAS Report Subsurface Utility Engineering Services Project #61001850, dated October 2, 2020, prepared for Tulloch Engineering and Infrastructure Ontario by T2 Utility Engineers Inc.;
- (VI) TULLOCH ENGINEERING IO N01559 THUNDER BAY CORRECTIONAL CENTRE Report Subsurface Utility Engineering Services Project #61002018, dated April 14, 2021, prepared for Tulloch Engineering and Infrastructure Ontario by T2 Utility Engineers Inc.; or
- (VII) SNC-LAVALIN O&M THUNDER BAY CORRECTIONAL CENTER – LAGOON STUDY Prepared by HATCH, Project #H351171, Rev. 0, dated November 14, 2016,

(collectively, the “**Utility Reports**”),

and, for greater certainty, any Utilities found below (but not on the surface of) the Site and which are described in, properly inferable, readily apparent or readily discoverable in the Technical Reports or the Utility Reports, shall constitute a Project Co Other Site Condition;

- (iii) could have been properly inferable, readily apparent or readily discoverable on the basis of Project Co Site Inspections, including taking into account all matters relating to the Site, including the nature and condition of the Site, the Existing Facilities and other structures, installations, fixtures, services, works, buildings and other improvements at the Site, and all other Site Conditions, existing as of the Technical Submission Deadline; or
 - (iv) affects the Lands and was caused or contributed to by Project Co or any Project Co Party.
- (b) "**Contracting Authority Other Site Condition**" means all Other Site Conditions other than Project Co Other Site Conditions.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Other Site Conditions.
- (d) Any Contracting Authority Other Site Condition encountered by Project Co:
- (i) prior to Substantial Completion shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; or
 - (ii) after Substantial Completion shall, subject to and in accordance with Section 39, be treated as an Excusing Cause.
- (e) Upon the discovery of any Contracting Authority Other Site Condition, Project Co shall immediately inform the Contracting Authority Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and any applicable provisions of this Project Agreement in respect thereof, at Contracting Authority’s cost, subject to and in accordance with Section 16.5(d).
- (f) Except to the extent required to comply with Applicable Law or any applicable provisions of this Project Agreement related to Other Site Conditions, Project Co shall not undertake any significant

work pursuant to Section 16.5(d) in respect of any Contracting Authority Other Site Condition until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Other Site Condition and has instructed Project Co to proceed with such work.

- (g) In the event that Contracting Authority wishes Project Co to perform actions which:
- (i) with regards to a Project Co Other Site Condition, are in addition to any actions required by this Project Agreement; or
 - (ii) with regards to a Contracting Authority Other Site Condition, are in addition to any actions required by Section 16.5(d),

Contracting Authority shall issue an instruction to Project Co specifying what actions Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost, subject to and in accordance with Section 16.5(h). For greater certainty, nothing in this Section 16.5(g) limits Project Co's general obligation pursuant to Section 16.5(c) in respect of Project Co Other Site Conditions.

- (h) If Section 16.5(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Project Operations or to delay or suspend all or any part of the Project Operations, as a result of any instructions given by Contracting Authority pursuant to Section 16.5(g), and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension, variation, delay or suspension in the Project Operations in accordance with Schedule 22 – Variation Procedure.

17. CITY OF THUNDER BAY AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 City of Thunder Bay and Third Party Financial Obligations

- (a) Subject to Section 17.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to the City of Thunder Bay, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
- (i) any development charges relating to the Works, the Facility or the Site;
 - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
 - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by the City of Thunder Bay, any applicable Utility Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority

and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

17.2 Contracting Authority Financial Obligations

- (a) Contracting Authority shall be responsible for all Financial Obligations required under the Contracting Authority Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of Contracting Authority.

18. DESIGN AND CONSTRUCTION OBLIGATIONS

18.1 Overall Responsibility

- (a) Project Co shall perform and complete the Works:
- (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with the Design Data;
 - (iv) in accordance with the Works Schedule; and
 - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 18.1(a), but subject to the provisions of Section 26, Schedule 20 – Payment Mechanism and Schedule 24 – Expiry Transition Procedure, if, at any time during the Project Term, any of the Works carried out by or on behalf of Project Co do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement, Project Co shall, at its own cost and expense, rectify the Works, the Facility and any part thereof so that:
- (i) the Works, the Facility and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement; and
 - (ii) the Works, the Facility and all parts thereof will, at all times, be able to meet the structural, mechanical, electrical and other performance standards set out in the Output Specifications.

18.2 Complete and Operational Facility

- (a) Project Co shall design, engineer, construct and commission the Facility so as to provide Contracting Authority a complete and operational Facility in accordance with the Output Specifications and the Project Co Proposal Extracts, and that will allow Project Co to perform the Project Co Services, all in accordance with and subject to the terms of this Project Agreement.

18.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 18.3.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the Facility and to achieve Correctional Services Functionality, Project Co shall consult with the user groups, stakeholders and the Contracting Authority Design Team in an interactive process. The development of the detailed design based on user group and stakeholder input shall in no way be considered a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the Contracting Authority Design Team) for each of the following:
 - (i) 50% and 100% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
 - (ii) 50% and 100% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
 - (iii) Permits, Licences, Approvals and Agreements drawings (phased, if applicable); and
 - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 18.3(d).
- (f) Project Co shall participate in design meetings every two weeks with the Contracting Authority Design Team and frequent consultations with user groups, including on an interim and ad hoc basis, and as needed, in order to fully achieve Correctional Services Functionality.
- (g) The Design Data and other items listed in Section 18.3(d) must contain, at a minimum, the following additional information:
 - (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the Contracting Authority Design Team to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;

- (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (h) All design review meetings held by Project Co with the Contracting Authority Design Team shall be held in the City of Thunder Bay, Ontario unless Contracting Authority otherwise agrees in writing. User group design workshops shall be held in the City of Thunder Bay, Ontario, unless Contracting Authority agrees otherwise in writing.
- (i) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (j) Subject to Section 18.6, neither Contracting Authority nor any Province Person (including, for certainty, the Design Conformance Consultant) will have any liability:
 - (i) if a document submitted by Project Co and reviewed by Contracting Authority or the Contracting Authority Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not, except as provided in Section 18.6, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting Authority Design Team as soon as practicable following receipt of a written request from the Contracting Authority Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and the Contracting Authority Design Team may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

18.4 Start-Up Meeting

- (a) Within 10 Business Days of Financial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.

- (b) The agenda for the Start-Up Meeting shall include the following:
- (i) Project Co’s plan to develop a successful long-term partnership with Contracting Authority and SolGen for the purpose of supporting Contracting Authority and SolGen in achieving their vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co’s process to ensure optimum design quality;
 - (iv) Project Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, Equipment, SolGen Equipment, Existing Equipment, occupant signage and wayfinding;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Design Team to allow sufficient time for review of each Works Submittal by the Contracting Authority Design Team, including allowing sufficient time for the Contracting Authority Design Team to consult with users, as required, and taking into account both the resources available to the Contracting Authority Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
 - (vi) Project Co’s plan to successfully integrate feedback from user groups and the Contracting Authority Design Team;
 - (vii) Project Co’s approach to timing of virtual models and renderings, construction of physical not-in-situ and in-situ mock ups, adjustment and user feedback on required mock-ups; and
 - (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation, and that takes into account the Document Control and Security Protocol.

18.5 Design Review Meetings and Workshops

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold design review meetings (the “**Design Review Meetings**”) with the Contracting Authority Design Team and hold user group design workshops (the “**Design Workshops**”) beginning immediately after Commercial Close upon the following terms:
- (i) the Project Co Representative shall arrange and host the Design Review Meetings and Design Workshops in consultation with the Contracting Authority Representative;
 - (ii) all Design Review Meetings shall be held in the City of Thunder Bay, Ontario and all Design Workshops shall be held in the City of Thunder Bay, Ontario, unless Contracting Authority agrees otherwise in writing;

- (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and the Design Workshops and shall incorporate such schedule into the Works Schedule;
- (iv) Project Co shall circulate to the Contracting Authority Design Team an agenda for each of the Design Review Meetings and each of the Design Workshops no later than 10 Business Days prior to the relevant Design Review Meeting and/or Design Workshop;
- (v) in advance of a Design Review Meeting, Project Co may submit to the Contracting Authority Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform Contracting Authority on the development of the Facility design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. If a Proposal Part corresponds to the interim submissions, then Project Co shall ensure that the interim submissions are substantially the same content and level of detail as the corresponding Proposal Part. For greater certainty,
 - (A) interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 of the Project Agreement; and
 - (B) the requirement for Project Co to submit interim submissions that are substantially the same content and level of detail as the corresponding Proposal Part, shall not,
 - (I) lessen, reduce or otherwise modify or amend Contracting Authority's rights under this Project Agreement to review any Design Development Submittals in accordance with Schedule 10 of the Project Agreement; or
 - (II) constitute acceptance by the Contracting Authority of the corresponding Proposal Part or any Design Development Submittal in accordance with Schedule 10 of the Project Agreement;
- (vi) the Design Review Meetings and Design Workshops shall be held in person except in circumstances where Contracting Authority determines (in its sole discretion) that a virtual meeting is to be held;
- (vii) Project Co shall maintain minutes of the Design Review Meetings and Design Workshops, including possible design solutions and changes in design, and, within 2 Business Days after each Design Review Meeting and Design Workshop, Project Co shall provide to the Contracting Authority Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting and Design Workshop;
- (viii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings and Design Workshops shall not be regarded as Submittals to which Schedule 10 – Review Procedure applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings and Design Workshops;
- (ix) Project Co shall submit to Contracting Authority the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure and Schedule 12 – Works Scheduling Requirements; and

- (x) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be as prescribed in Schedule 10 - Review Procedure.
- (b) Prior to the 50% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by Contracting Authority) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or Contracting Authority, each acting reasonably:
 - (i) all items listed in Sections 1, 2 and 3 of Appendix A of Schedule 10 – Review Procedure;
 - (ii) space planning and room layouts;
 - (iii) exterior elevations including materials, finishes and colours;
 - (iv) interior materials, finishes and colours;
 - (v) millwork;
 - (vi) civil engineering design including grading and site servicing;
 - (vii) site landscape design;
 - (viii) accessibility (with stakeholder participation);
 - (ix) Indigenous design elements (with stakeholder participation);
 - (x) structural design including plans and sections;
 - (xi) mechanical and electrical systems including plant layouts and functionality;
 - (xii) information/communication technology;
 - (xiii) security systems;
 - (xiv) audio visual systems;
 - (xv) radio communications systems;
 - (xvi) sustainable design and LEED features, including a dedicated LEED workshop; and
 - (xvii) future adaptability and flexibility features.
- (c) Prior to the 100% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by Contracting Authority) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or Contracting Authority, each acting reasonably:
 - (i) all items listed in Section 18.5(b) and all items listed in Section 4 of Appendix A of Schedule 10 – Review Procedure, as required;

- (ii) physical mock-ups for Contracting Authority and user review (including, for certainty, review by SolGen Staff and stakeholders);
 - (iii) Equipment, SolGen Equipment and Existing Equipment;
 - (iv) interior elevations;
 - (v) door/hardware functionality; and
 - (vi) signage and wayfinding.
- (d) Prior to the 50% and 100% Construction Documents Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by Contracting Authority) with respect to the following matters and any other Design Review Meetings and/or Design Workshops required by Project Co or Contracting Authority, each acting reasonably:
- (i) all items listed in Section 5 of Appendix A of Schedule 10 – Review Procedure, as required;
 - (ii) millwork details;
 - (iii) office area layout details;
 - (iv) Equipment, SolGen Equipment and Existing Equipment coordination details; and
 - (v) signage and wayfinding.
- (e) The purpose of the Design Review Meetings and Design Workshops is to facilitate the incorporation of Contracting Authority, SolGen and Stakeholder input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

18.6 Correctional Services Functionality

- (a) Contracting Authority confirms that, as at the date of this Project Agreement, it and SolGen have reviewed the Site and landscape design, blocking and stacking diagrams and updated space/area analysis and that, subject to any qualifications or comments noted thereon, such submittals satisfy the Output Specifications in respect of Correctional Services Functionality, so far as can reasonably be determined given the level of detail in the submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to Contracting Authority, for its review pursuant to Schedule 10 - Review Procedure, a draft report (each a “**Correctional Services Functionality Report**”) to specifically identify, with reference to the Output Specifications, such matters of Correctional Services Functionality that Project Co wishes the Contracting Authority Design Team to review and consider as part of the Design Development Submittals. Each Correctional Services Functionality Report shall demonstrate how the Output Specifications are satisfied in respect of Correctional Services Functionality.
- (c) With the Construction Document Submittals, Project Co shall submit to Contracting Authority, for review by Contracting Authority and SolGen, pursuant to Schedule 10 - Review Procedure, a final Correctional Services Functionality Report, and Contracting Authority shall confirm that, subject

to any qualifications or comments noted thereon, such Construction Document Submittals satisfy the Output Specifications in respect of Correctional Services Functionality, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.

- (d) Each Correctional Services Functionality Report must be prepared in accordance with the technical submission requirements to be provided by Contracting Authority to Project Co after identification of the preferred proponent and must address the way in which the Design Data meets the requirements of Correctional Services Functionality.
- (e) Correctional Services Functionality is a salient factor of importance to Contracting Authority and SolGen to all stages of development of the Facility and shall be taken into account in the review of all Submittals submitted in accordance with the Review Procedure.

18.7 Performance of Design Obligations

- (a) In the design and engineering of the Facility, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

18.8 General Construction Obligations

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facility, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner and consistent with the Design Quality Plan and Construction Quality Plan;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Works from all of the elements, casualty and damage;
 - (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;

- (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with Contracting Authority's prior written consent in accordance with Section 18.9.
- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or Project Co's indemnity pursuant to Section 53.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Site and the Facility to prevent access onto such portions of the Site and/or the Facility of any persons not entitled to be there, as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.
- (d) **[Intentionally Deleted]**
- (e) From the date on which Project Co sets up and begins using its construction office facilities at the Site until the Final Completion Date, or such other time as agreed by Contracting Authority and Project Co, each acting reasonably, Project Co shall provide a secure, lockable construction office (the "Site Office") located at the Site for use solely by Contracting Authority, SolGen and their consultants. The Site Office must satisfy the following requirements and otherwise be satisfactory to Contracting Authority, acting reasonably. The Site Office must:
- (i) be equipped with five desks (each with a minimum 2 drawers), and seven office chairs;
 - (ii) be equipped with one lateral, lockable, filing cabinet which must be approximately 915mm(w) x 480mm(d) x 1370mm(h) in size, containing four drawers;
 - (iii) be equipped with two free standing shelving units with three shelves each being 300mm(d) x 915mm(w);
 - (iv) be equipped with one meeting table large enough to accommodate one full size drawing and seating for eight persons;
 - (v) be equipped with two hanging file-racks, each capable of holding 1200 A0 size drawings, and 1 approx. 1060mm x 3100mm layout table inclined at 15 degrees;
 - (vi) be equipped with an all-in-one photocopier, printer, and scanner (that is set up to allow wireless printing);
 - (vii) be equipped with a dedicated high-speed wireless internet connection;
 - (viii) be equipped with general office lighting and duplex power outlets located not more than four meters apart;
 - (ix) be equipped with air conditioning and heating, and maintain year-round comfort for occupants; and

- (x) have reasonable access to washrooms at the Site, which washrooms may be portable, and shall be located at least ten meters away from the Site Office and not greater than 20 meters from the Site Office.
- (xi) be maintained to be clean and free from dirt, and cleaned no less frequently than weekly;
- (xii) be equipped with a mini-fridge, microwave and electric kettle;
- (xiii) be placed in a location acceptable to Contracting Authority, acting reasonably, which location shall be in close proximity to Project Co's site offices;
- (xiv) be easily accessible at all times, such that access points are hazard free and free from snow and ice accumulation;
- (xv) be equipped with floor/slush mats at the entrance;
- (xvi) be equipped with a canopy at the entrance door which provides protection from weather; and
- (xvii) include access to suitable parking spaces to accommodate at least four full time vehicles, with further allowance for a reasonable amount of visitor spaces on an ad hoc basis.

18.9 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of Contracting Authority, in its sole discretion.

18.10 Change in Standards

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the Project Operations, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to Contracting Authority of such change. If, after such notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Project Operations and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 18.10 shall not apply where a change in a technical standard is also a Change in Law.

18.11 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority prior to Substantial Completion or after Substantial Completion in respect of the completion of the Minor Deficiencies and Seasonal Works, and the rectification of any Works, the Facility or any part thereof as required pursuant to Section 18.1(b) of the Project Agreement, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Contracting Authority pursuant to Schedule 10 - Review Procedure.

18.12 Cash Allowance Items

- (a) Project Co shall open the Cash Allowance Account and manage the Cash Allowance Account in accordance with this Section 18.12.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
- (i) Project Co shall out of its own funds:
 - (A) deposit the Cash Allowance Amounts into the Cash Allowance Account (I) on the dates and in the amounts set out in the Financial Model, and (II), subject to Section 18.12(b)(v), as otherwise required to satisfy any payment requirements for Cash Allowance Items, for any invoice that will be approved by Contracting Authority pursuant to Section 18.12(e) where such payment requirements exceed the then balance of the Cash Allowance Account (for clarity, determined on an aggregate basis across all Cash Allowance Items); and
 - (B) satisfy any payment requirements for applicable HST on the Cash Allowance Items set out in any invoice that will be approved by Contracting Authority pursuant to Section 18.12(e);
 - (ii) Project Co shall hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that has been quoted or made available to Project Co by Schedule I Banks in Canada for holding the cash allowance monies in a Canadian dollar demand deposit account;
 - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
 - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to Contracting Authority on a monthly basis;
 - (v) in the event that any payment requirements for Cash Allowance Items, excluding applicable HST, for any invoice that will be approved by Contracting Authority pursuant to Section 18.12(e) exceed the aggregate of all of the Cash Allowance Amounts, Contracting Authority shall make a deposit(s) into the Cash Allowance Account on an agreed upon date(s);
 - (vi) if, at the earlier of Final Completion and the Termination Date, there exists a positive balance in the Cash Allowance Account (after all invoices for Cash Allowance Items

- approved by Contracting Authority have been paid), an amount equal to such balance shall be paid by Project Co to Contracting Authority or as Contracting Authority directs; and
- (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the Contracting Authority Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
 - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
 - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 18.12(c), Project Co shall, on a monthly basis, provide to the Contracting Authority Representative a request for payment approval (each, a **“Request for Payment Approval”**) that includes the following information:
- (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation, which shall include copies of all vendor and Project Co Party invoices;
 - (ii) evidence that the commitment by Project Co to purchase or perform, as applicable, the Cash Allowance Items has been approved by Contracting Authority; and
 - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
- (e) Contracting Authority shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. Contracting Authority shall only be permitted to withhold its approval if Contracting Authority determines that the Request for Payment Approval does not contain the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 18.12. If Contracting Authority withholds its approval pursuant to this Section 18.12(e) and subsequently receives the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 18.12, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, Contracting Authority’s approval of the invoices set out in the aforementioned Request for Payment Approval. Any Dispute in respect of or arising from any Request for Payment Approval (including the approval thereof) shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.
- (f) If Contracting Authority approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or each Project Co Party from the Cash Allowance Account, plus applicable HST.
- (g) Project Co acknowledges and agrees that:

- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
- (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
- (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
- (iv) the Cash Allowance Amounts shall be deposited and the Cash Allowance Account shall be managed by Project Co in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

18.13 Enbridge Natural Gas Distribution Capacity

- (a) Notwithstanding Section 15 of Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation and any other provision of the Project Agreement to the contrary, in the event that:
 - (i) the existing natural gas distribution line provided by Enbridge that is capable of being connected to the Facility does not have the capacity to provide sufficient natural gas for the purposes of Project Co’s performance of any aspect of the Project Co Commissioning and the Project Co Services that is reliant on the consumption of natural gas; and
 - (ii) Enbridge does not provide additional permanent natural gas distribution line capacity to such existing natural gas distribution line by the date that Project Co is scheduled to commence the Project Co Commissioning pursuant to the Final Commissioning Program and the Works Schedule (as such date may be adjusted pursuant to the Project Agreement from time to time), and, as a result, there is insufficient natural gas available for Project Co to perform any aspect of the Project Co Commissioning and the Project Co Services that is reliant on the consumption of natural gas in accordance with the Project Agreement;

Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if and to the extent that, (i) prior to Substantial Completion, such insufficiency of natural gas affects the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date or any material increase in the Direct Cost to Project Co of performing the Works, and, (ii) following Substantial Completion, interferes adversely with, or causes a failure of, the performance of the Project Co Services, provided that such insufficiency of natural gas is not caused by or contributed to by any breach of the Project Agreement by Project Co or any act or omission of Project Co or a Project Co Party. Project Co shall, in any event, take commercially reasonable steps to mitigate the consequences of any such insufficiency of natural gas. For greater certainty, Sections 40.1(a)(ii) and 40.1(a)(iv) of the Project Agreement shall not apply to any such insufficiency of natural gas.

- (b) Project Co shall have no responsibility for causing Enbridge to provide additional permanent natural gas distribution line capacity to the existing natural gas distribution line described in Section 18.13(a)(i).

19. CONTRACTING AUTHORITY ACCESS AND MONITORING

19.1 Contracting Authority Access During the Works Phase

- (a) Subject to Section 19.1(b) but without limiting any of Contracting Authority's rights in respect of the Site, the Facilities and the Existing Facilities, Project Co acknowledges and agrees that Contracting Authority, the Province Persons and their respective representatives shall, prior to Substantial Completion, have unrestricted access to the Site, the Facility and the Existing Facilities and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours. For clarity, nothing in this Section 19.1 shall restrict or impede Contracting Authority's right to use and access the Existing Facilities or any part of the Site or the Facility not required at the time for Project Co's performance of the Works in accordance with the terms hereof.
- (b) In exercising their access rights under Section 19.1(a), Contracting Authority, the Province Persons and their respective representatives shall:
- (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for Contracting Authority and the Province Person's own use);
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

19.2 Right to Use Site by Contracting Authority and Province Persons

- (a) During the Operational Term, Contracting Authority, each Province Person (including, for certainty, the Design Conformance Consultant), Inmate and Visitor shall have a right to use, enter on, have access to, and occupancy of, the Site and the Facility as is required by them for any purpose, including to, as applicable, perform the Correctional Complex Activities and to ensure the achievement of Correctional Services Functionality, Project Co hereby confirms that such right to enter on, occupy, use and access the Site and Facility including the unrestricted right to full access to the Site and the Facility to Contracting Authority, all Province Persons (including, for certainty, the Design Conformance Consultant), Inmates and Visitors during such period shall be without interference by Project Co or any Project Co Party. In exercising such rights, Project Co shall not, and shall require that the Project Co Parties shall not, disrupt the performance of the Correctional Complex Activities or compromise the nature of the Province's correctional system, so as to affect public confidence in such system.

19.3 Right of Access to Additional Contractors

- (a) Subject to Section 9.6, during the Project Term, Project Co shall, and shall ensure that the Project Co Parties shall, give Additional Contractors access to those parts of the Site and the Facility as is necessary for the purpose of carrying out and completing Additional Works.

19.4 Increased Monitoring

- (a) If, at any stage, Contracting Authority is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), Contracting Authority may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as Contracting Authority considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to Contracting Authority's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Project Agreement. Project Co will compensate Contracting Authority for any reasonable costs incurred as a result of such increased monitoring.

19.5 Right to Open Up

- (a) Contracting Authority shall have the right, at any time prior to the Final Completion Date to request Project Co to open up and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.
- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to Contracting Authority and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 19.3 shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

19.6 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by Contracting Authority or the Contracting Authority Representative of the rights under this Section 19 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 19.

20. WORKS SCHEDULE AND WORKS REPORT**20.1 Completion of Works**

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
- (i) Substantial Completion by the Scheduled Substantial Completion Date; and
 - (ii) Final Completion by the Scheduled Final Completion Date.

20.2 The Works Schedule

- (a) From Financial Close until the Draft Works Schedule becomes the Works Schedule pursuant to Section 20.2(d), the Proposed Works Schedule shall be deemed to be the Works Schedule and, until such time, the following provisions of the Project Agreement applicable to the Works Schedule shall be applicable to the Proposed Works Schedule as though the Proposed Works Schedule was the Works Schedule: 9.6(d)(ii), 9.6(d)(iii), 11.2(d)(ii), 14.1(e), 18.1(a)(iv), 18.4(b)(v), 18.5(a)(iii), 18.12(g)(iv), 20.4, 20.6(a), 21.8 and 24.15(c) of the Project Agreement; Sections 2.1 and 2.7(b) of Part A and Section 6.2 of Appendix A of Schedule 10 – Review Procedure; Section 1.6(b)(vi) of Schedule 22 – Variation Procedure; Section 1(d) of Schedule 34 – Works Report Requirements; the definition of “**Critical Non-Conformance**” set forth in Schedule 1 – Definitions and Interpretation; clauses (g), (u)(i) and (v) of Appendix A of Schedule 6 – Independent Certifier Agreement; and Sections 4.2 and 10.6 of Schedule 14 – Outline Commissioning Program.
- (b) Project Co shall, in accordance with Schedule 12 – Works Scheduling Requirements, prepare and submit to Contracting Authority and the Independent Certifier:
- (i) within 45 calendar days of Financial Close, the Draft Works Schedule and a report indicating the differences between the Proposed Works Schedule and the Draft Works Schedule;
 - (ii) every month within 10 Business Days following the end of each calendar month from Financial Close until Final Completion, a Progress Works Schedule;
 - (iii) every month within 10 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, a Look-ahead Schedule;
 - (iv) within 10 calendar days following the written request from Contracting Authority, acting reasonably, a Works Area Micro-Schedule for any specific area, and every two weeks thereafter an updated Works Area Micro-Schedule for the specific area until the Works in the area is complete;
 - (v) within 15 calendar days of the Final Completion Date, the As-built Works Schedule and the final Works Report; and
 - (vi) at any time prior to Substantial Completion, within 5 calendar days following the written request by Contracting Authority, existing current or past versions of the Works Schedule or Works Report,

each meeting the requirements of Schedule 12 – Works Scheduling Requirements to the satisfaction of Contracting Authority that support the completion of the Works in accordance with Section 20.1.

- (c) Contracting Authority shall, within 15 Business Days of receipt thereof, provide Project Co with comments on the first Draft Works Schedule in accordance with Schedule 10 – Review Procedure. Project Co shall revise and resubmit the Draft Works Schedule to the extent required by Schedule 10 – Review Procedure within 15 Business Days of receipt of any comments from Contracting Authority. Contracting Authority shall provide any comments on each subsequent Draft Works Schedule within 5 Business Days of receipt thereof. Section 38.5(a) shall apply in respect of any Compensation Event that occurs after the date that is 94 days following Financial Close and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Works Schedule referred to in Section 20.2(b)(i), provided that in the event that Contracting Authority does not provide Project Co with its comments on the Draft Works Schedule within such 15 Business Day time period or such 5 Business Day time period, as the case may be, such 94 day time period shall be automatically extended by the number of days that Contracting Authority failed to provide such comments following the expiry of such 15 Business Day time period, or 5 Business Day time period, as the case may be.
- (d) When agreed by the Parties, the Draft Works Schedule shall become the Works Schedule, and on such date the Works Schedule shall replace the Proposed Works Schedule.
- (e) Project Co shall submit a draft Works Area Micro-Schedule in accordance with Section 20.2(b)(iv) and Schedule 12 – Works Scheduling Requirements for any portion of the Progress Works Schedule relating to any specific area of the Works involving:
 - (i) integration or commissioning activities where the current scheduling information is not sufficiently detailed to allow for the effective use of resources of Contracting Authority; or
 - (ii) work activities by either Project Co or Contracting Authority that are dependent upon the activities of the other Party,where such activity, in Contracting Authority’s opinion, acting reasonably, requires enhanced scheduling detail from Project Co to support the effective coordination of such activity in that specific area.
- (f) Contracting Authority shall provide Project Co with comments on the draft of a Works Area Micro-Schedule in accordance with Schedule 10 - Review Procedure. Project Co shall revise the draft of the Works Area Micro-Schedule to the extent required by Schedule 10 - Review Procedure within 5 days of receipt of any comments from Contracting Authority.
- (g) When agreed by the Parties in writing, the draft of the Works Area Micro-Schedule shall become the Works Area Micro-Schedule for that specific area.
- (h) At the request of the Contracting Authority Representative, the Project Co Representative shall review the Works Schedule with the Contracting Authority Representative to explain to the Contracting Authority Representative’s satisfaction:
 - (i) the activity logic and planning assumptions contained in the Works Schedule;
 - (ii) any proposed changes to the critical path of the Works;

- (iii) the impact of the Works on the Works Milestones; and
- (iv) any other matter raised by the Contracting Authority Representative concerning the Project Schedules.
- (i) Project Co shall participate in meetings and conduct workshops with Contracting Authority in relation to the Project Schedules in accordance with Section 3 of Schedule 12 – Works Scheduling Requirements.
- (j) Project Co and Contracting Authority shall comply with the provisions of Schedule 12 – Works Scheduling Requirements.
- (k) Contracting Authority shall provide Project Co with comments on the As-built Works Schedule in accordance with Schedule 10 – Review Procedure. Project Co shall revise the As-built Works Schedule to the extent required by Schedule 10 - Review Procedure within 10 days of receipt of any comments from Contracting Authority.
- (l) Any comment or lack of comment by Contracting Authority in regards to any Project Schedules indicating potential Delay Events pursuant to Section 37.1(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

20.3 Changes to the Works Schedule

- (a) Any changes to the Works Schedule which affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by Contracting Authority. Subject to the terms of Schedule 22 – Variation Procedure, any Contracting Authority approval of such changes to the Works Schedule does not entitle Project Co to a Variation, an extension of time or any additional compensation under this Project Agreement.
- (b) Where Project Co proposes any change to the Works Schedule, Project Co shall, no later than 2 Business Days following the written request of Contracting Authority, deliver to Contracting Authority a copy of the most current version of the requested Progress Works Schedule(s) and/or any past version of the requested Progress Works Schedule(s) in its native software format.

20.4 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 37, if, at any time:
 - (i) the actual progress of the Works has significantly fallen behind the Works Schedule or a Recovery Schedule, as applicable, including, for clarity, any failure of Project Co to achieve a Works Milestone; or
 - (ii) the revised implementation strategy, forecast dates for future activities or staging has changed to the extent that it is no longer practical to compare the Current Progress Works Schedule to the Works Schedule or the current Recovery Schedule, using Project Co's scheduling software; or
 - (iii) Contracting Authority is of the opinion that:

- (A) the actual progress of the Works has significantly fallen behind the Current Progress Works Schedule;
- (B) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (C) Project Co will not achieve Substantial Completion by the Longstop Date, or
- (D) the revised implementation strategy, forecast dates for future activities or staging has changed to the extent that it is no longer practical to compare the Current Progress Works Schedule to the Works Schedule or the current Recovery Schedule,

Contracting Authority may give notice to Project Co and Project Co shall be required:

- (iv) within 5 Business Days of receipt, or within one month in the circumstances set forth in Sections 20.4(a)(ii) or 20.4(a)(iii)(C), of notice from Contracting Authority, to produce and deliver to each of the Contracting Authority Representative and the Independent Certifier:
 - (A) a schedule (the “**Recovery Schedule**”) which shall comply with all requirements of a Progress Works Schedule as set out in Section 8 of Schedule 12 – Works Scheduling Requirements, except that
 - (I) its title shall be “Recovery Schedule”, and
 - (II) for the first Recovery Schedule, the Works Schedule baseline shall be shown in the Recovery Schedule using the scheduling software’s baseline functionality to visually indicate the variance between the Works Schedule and the first Recovery Schedule, or
 - (III) for subsequent Recovery Schedules, if applicable, the current Recovery Schedule baseline shall be shown in the new Recovery Schedule using the scheduling software’s baseline functionality to visually indicate the variance between the current Recovery Schedule and the new Recovery Schedule,
 - (B) and, if applicable, the Recovery Schedule shall show the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to:
 - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
 - (C) a report (the “**Recovery Schedule Report**”) which shall comply with all requirements of a Works Schedule Progress Report as set out in Section 1(d) of Schedule 34 – Works Report Requirements except that:

- (I) its title shall be “Recovery Schedule Report”;
- (II) the Recovery Schedule Report shall describe in narrative form:
 - (i) all variances between the Works Schedule and the Recovery Schedule, or, if applicable, between the current Recovery Schedule and a new Recovery Schedule; and
 - (ii) if applicable, the reasons for the delay and/or changes to the implementation strategy together with a description of the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to Project Co, as applicable:
 - a. achieving Substantial Completion by the Scheduled Substantial Completion Date, or
 - b. achieving Substantial Completion by the Longstop Date,
- (v) if applicable, bring the progress of the Works back on schedule in accordance with the deliverables provided for in Section 20.4(a)(iv).
- (b) Contracting Authority may, acting reasonably, give notice to the Lenders’ Agent pursuant to Section 13 of the Lenders’ Direct Agreement that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority’s opinion that Project Co is failing to maintain the schedule.
- (c) For greater certainty, provided that Project Co has complied with this Section 20.4 and is not in default under Section 42.1(a)(iii), the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date on its own shall not be a Project Co Event of Default for the purposes of Section 42.1(a)(vi).

20.5 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of Contracting Authority, in Contracting Authority’s sole discretion, Project Co shall not be entitled to the Substantial Completion Certificate prior to, and the Substantial Completion Date and Payment Commencement Date shall not be earlier than, the Scheduled Substantial Completion Date.
- (b) If Project Co advises Contracting Authority that Project Co expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the Contracting Authority Representative shall be entitled to require Project Co to produce and submit to the Contracting Authority Representative a revised Progress Works Schedule or Recovery Schedule, as applicable, showing the manner and the periods in which the Works shall be performed and what the revised date for Substantial Completion would be so as to enable Contracting Authority to consider at its sole discretion:
 - (i) whether to agree to an earlier Substantial Completion Date or Scheduled Substantial Completion Date; and

- (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Substantial Completion Date or Scheduled Substantial Completion Date.

All costs associated with any such modifications to this Project Agreement shall be borne by Project Co.

20.6 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 10 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Contracting Authority Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
 - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) a Current Progress Works Schedule and a Look-ahead Schedule, all in accordance with Schedule 12 – Works Scheduling Requirements;
 - (iii) a narrative description of any Dispute related to the Works, including any action that has taken place over the relevant month to resolve such Dispute;
 - (iv) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 11.6, in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
 - (v) an update on those matters set out in Schedule 34 – Works Report Requirements; and
 - (vi) any other information specifically requested by Contracting Authority on the progress of the Works,

all in form and substance satisfactory to Contracting Authority, acting reasonably.

- (b) Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with the On-line (web-based) Project Management (“**OCPM**”) software system specified by Contracting Authority. It is contemplated that the OCPM software system will automate certain aspects of the processes identified in Schedule 10 – Review Procedure, Schedule 11A – Design Quality Plan and Construction Quality Plan, Schedule 11B – Service Quality Plan Outline, Schedule 22 – Variation Procedure, and Schedule 34 – Works Report Requirements and other processes as determined by Contracting Authority in its sole discretion.

21. EQUIPMENT

21.1 Equipment Steering Committee

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Equipment Steering Committee**”) consisting of:
 - (i) 4 representatives appointed by SolGen from time to time;

- (ii) 2 representatives of Contracting Authority, one of whom shall be the Contracting Authority Representative; and
 - (iii) 2 representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the Equipment Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Equipment Steering Committee.
 - (c) The Equipment Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to Equipment, SolGen Equipment, and Existing Equipment, including, but not limited to, the interaction between Equipment, SolGen Equipment and Existing Equipment commissioning and Plant commissioning.
 - (d) The primary role of the Equipment Steering Committee shall be to oversee, coordinate and monitor the planning, design, procurement, installation, and commissioning of all Equipment, SolGen Equipment and Existing Equipment, and, as required, to implement the planning of all Equipment, SolGen Equipment and Existing Equipment, all in a timely and efficient manner and in accordance with the Works Schedule and Equipment Procurement and Existing Facilities Sub-Plan. Project Co and the Equipment Steering Committee will work co-operatively with any consultant who may be retained by Contracting Authority to assist them on Equipment, SolGen Equipment and Existing Equipment matters.
 - (e) The Equipment Steering Committee shall coordinate with the Transition Subcommittee on all matters relating to the planning, design, transfer (including, but not limited to, the decommissioning, de-installation, disconnection and display/recycling, if applicable), installation and commissioning of all Existing Equipment in a timely and efficient manner and in accordance with the Works Schedule and the Transition Management Sub-Plan. Project Co and the Equipment Steering Committee will work co-operatively with any consultant who may be retained by Contracting Authority to assist them on Existing Equipment matters.
 - (f) One representative of Contracting Authority (being the Contracting Authority Representative or his or her delegate), one representative of Project Co and two representatives of SolGen (or a delegate or delegates thereof) shall constitute a quorum at any meeting of the Equipment Steering Committee. A quorum of members may exercise all the powers of the Equipment Steering Committee. The members shall not transact business at a meeting of the Equipment Steering Committee unless a quorum is present.
 - (g) The members of the Equipment Steering Committee may adopt such other procedures and practices for the conduct of the activities of the Equipment Steering Committee as they consider appropriate from time to time.
 - (h) Project Co shall coordinate and consult with the Equipment Steering Committee on all matters relating to Project Co's procurement, planning, design, installation, commissioning and other obligations and responsibilities under this Section 21.
 - (i) Unless the Works Committee otherwise directs:

- (i) a representative of Project Co shall be the chairperson of the Equipment Steering Committee;
- (ii) Project Co shall be responsible for preparing and providing the members of the Equipment Steering Committee an agenda for each meeting of the Equipment Steering Committee no fewer than 5 Business Days prior to each meeting;
- (iii) minutes of all meetings, recommendations and decisions of the Equipment Steering Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co and Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within 5 Business Days of receipt of the minutes that it disagrees with the contents of the minutes, Project Co and Contracting Authority shall be deemed to have approved such minutes; and
- (iv) Project Co shall maintain a complete set of all minutes of the meetings of the Equipment Steering Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

21.2 Contracting Authority Equipment Responsibilities

- (a) Without limiting any of Contracting Authority's rights under this Section 21, Contracting Authority shall be responsible for, in its sole discretion:
 - (i) determining the method of planning, budgeting, procurement, quantity, make model, manufacturer, vendor and any terms and conditions of financing for all SolGen Equipment based upon tenders, quotations or proposals for SolGen Equipment;
 - (ii) confirming the persons eligible to take part in each SolGen Equipment procurement as proponents;
 - (iii) overseeing and, from time to time, approving of Project Co's negotiations with Not-In-Contract Equipment vendors and manufacturers;
 - (iv) with respect to any and all Not-In-Contract Equipment procurements, exercise the rights set out in Section 21.4(b); and
 - (v) except as otherwise expressly set out in this Project Agreement, Contracting Authority shall or shall cause the installation and commissioning of all Existing Equipment.
- (b) Prior to the initiation of the procurement process and the making of awards to the Equipment vendors and/or manufacturers by Project Co or the Project Co Parties, Contracting Authority shall have the right to review and approve of all technical specifications with respect to each item of Equipment, which approval will not be unreasonably withheld. For clarity, the development of the technical specifications relating to Equipment shall be the responsibility of Project Co, subject to consultation, coordination and approval of the Equipment Steering Committee.
- (c) For greater certainty, Project Co, and not Contracting Authority, shall be liable as "purchaser" to the vendor or manufacturer under every purchase order, contract and manufacturer's installation

invoice related to In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms.

- (d) Contracting Authority shall assume the obligation to make any payments in respect of Equipment that are payable to a vendor or a manufacturer after the Substantial Completion Date under any and all leases, managed equipment programs, usage based pricing and other such arrangements or for service agreements, provided that Project Co is not expressly obligated to make any such payments under this Project Agreement (including, for clarity, under Schedule 15 - Output Specifications) and Contracting Authority has given its prior written approval to such arrangements.
- (e) Contracting Authority shall be responsible for any and all decontamination of Existing Equipment (as required under Applicable Law or by Contracting Authority, in its sole discretion) prior to the decommissioning, de-installation and disconnection of such Existing Equipment by Project Co.

21.3 SolGen Equipment

- (a) Contracting Authority shall cause SolGen to directly procure the SolGen Equipment and Contracting Authority shall cause SolGen to be liable as “purchaser” to the vendor and under every purchase order and other related contract including manufacturer’s installation invoice related to the SolGen Equipment.
- (b) For greater clarity, Contracting Authority, and not Project Co, shall cause SolGen to make all payments in respect of the SolGen Equipment in accordance with this Project Agreement and the relevant invoice terms.

21.4 Project Co Equipment, Existing Equipment and SolGen Equipment Responsibilities

- (a) Without limiting any other obligation of Project Co in this Project Agreement, Project Co shall be responsible for the following:

- (i) Planning and Design

Throughout the design development process and the equipment procurement, and installation process, and in consultation with Contracting Authority and the Equipment Steering Committee, Project Co shall, in a timely manner and in full coordination with the relevant equipment vendor or manufacturer:

- (A) prepare, coordinate, and finalize a list of Equipment, Existing Equipment and SolGen Equipment and specifications based on the development of Project Co’s Design Data (the “**Master Equipment List**”). Project Co shall also coordinate and consult with Contracting Authority and SolGen Staff, and end users of the Facility when developing and finalizing the Master Equipment List. The Master Equipment List shall include, without limitation:

- i. the name, identification tag and quantity of each item;
- ii. the designation of the items as In-Contract Equipment, Not-In-Contract Equipment, Existing Equipment or SolGen Equipment;

- iii. the building services required, if applicable, for the function of each item;
and
 - iv. the location of each item.
- (B) subject to the prior approval of Contracting Authority, develop, revise (as may be required) and finalize all Facility drawings (including, but not limited to, the room-by-room layouts, elevations and reflected ceiling plans of the Facility) to determine the manner in which Existing Equipment can suitably be used in the Facility;
- (C) provide analyses and recommendations to Contracting Authority on the effect that the type, quality and quantity of Not-In-Contract Equipment and SolGen Equipment may have on the overall design of the Facility and on the relevant areas within the Facility;
- (D) develop, coordinate, revise (as may be required), and finalize the design of the Facility to accommodate all Equipment, SolGen Equipment and Existing Equipment;
- (E) validate, coordinate and, if required, revise the utilities information, the design and the Project Operations described in Schedule 15 – Output Specifications;
- (F) develop, coordinate, revise (as may be required) and finalize all Design Data associated with the floor layouts and servicing of all Equipment, SolGen Equipment and Existing Equipment (including, but not limited to, all architectural, structural, mechanical and electrical information and communications technology as well as any other building systems related design and construction information); and
- (G) develop or collate, as applicable, all Shop Drawings for Equipment and Existing Equipment, submit them to Contracting Authority for review and approval and fully coordinate the reviewed Shop Drawings with the Design Data.
- (ii) Procurement
- (A) Except as otherwise expressly set out in or limited by this Project Agreement (including, but not limited to, by Section 21.2(b)), Project Co shall be responsible for all procurement matters related to Equipment as part of its responsibility for the performance and completion of the Project Operations. For clarity, Project Co shall be responsible for:
- (I) the procurement of each and every item of Equipment, including, but not limited to:
 - (i) determining the method of procurement for all Equipment;
 - (ii) the preparation and issuance of tenders, quotations or requests for proposals documentation;

- (iii) implementing and managing the procurement processes and evaluations;
 - (iv) conducting negotiations with Equipment vendors and manufacturers; and
 - (v) making vendor, manufacturer and Equipment selections and awards;
 - (II) the execution of any and all purchase orders and/or contracts;
 - (III) incorporating all review comments received from Contracting Authority pursuant to Section 21.2(b) into the Equipment procurement documentation and the negotiation, selection and award processes;
 - (IV) following the completion of each procurement, updating and maintaining the Master Equipment List;
 - (V) subject to Section 21.2(d) and Section 21.10, the payment of all Equipment invoices, including, but not limited to, manufacturer's installation invoices and other documentation related thereto;
 - (VI) managing the procurement of all Equipment so as to bundle the purchase of all Equipment to minimize the number of Equipment requests for proposals issued to the extent reasonably possible; and
 - (VII) developing all required design and installation and training, requirements and other information with respect to Equipment in a manner that is ready for incorporation in the relevant procurement documentation, including but not limited to scheduling and submission requirements associated with Shop Drawings and any other building interface information, scheduling requirements as well as, subject to Section 21.5(a)(iii) any reasonable requirements associated with delivery, installation, commissioning and training that the vendor and/or the manufacturer must comply with.
- (B) In addition to its other obligations in this Article 21, Project Co shall act as procurement manager in respect of all items and all bundled items of Not-In-Contract Equipment as part of its responsibility for the performance and completion of the Works. For clarity, Project Co shall be responsible for:
- (I) in consultation and coordination with the Equipment Steering Committee, establishing procurement processes that are fair, open and competitive, all in accordance with any applicable Contracting Authority policies, Contracting Authority buying agreements, and good purchasing and procurement practices and complying with such procurement processes;
 - (II) in consultation and coordination with and incorporating the input from, Contracting Authority, preparing and issuing procurement documentation in respect of Not-In-Contract Equipment, including tenders, quotations and/or requests for proposals for Not-In-Contract Equipment ("NIC

- Equipment Procurement Documentation”). Contracting Authority shall, acting reasonably, approve of the form, substance and all terms and conditions of all NIC Equipment Procurement Documentation (including, but not limited to, the technical specifications relating to the Not-In-Contract Equipment which, for clarity, shall be developed by Project Co in coordination and consultation with the Equipment Steering Committee and, where applicable, any associated service and preventative maintenance arrangements);
- (III) developing all required Design Data for Not-In-Contract Equipment in conformance with Schedule 15 – Output Specifications and in a manner that is ready for incorporation in the relevant procurement documentation;
 - (IV) developing any other information and/or requirements that Project Co deems necessary to be incorporated in the procurement documentation, as approved by Contracting Authority, and in a manner that is ready for incorporation;
 - (V) attending all user group meetings to facilitate and enable the development and finalization of NIC Equipment Procurement Documentation (including technical specifications, which shall be developed by Project Co in coordination and consultation with the Equipment Steering Committee);
 - (VI) conducting the procurement for all Not-In-Contract Equipment including:
 - (i) jointly with the Equipment Steering Committee, confirming the persons eligible to take part in each Not-In-Contract Equipment procurement as proponents;
 - (ii) reviewing and evaluating all tenders, quotations or proposals from Not-In-Contract Equipment vendors by clearly delineating the costs and performance of the Not-In-Contract Equipment, the training methods and values, the testing and calibration protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
 - (iii) conducting the technical evaluations of procurement submission by reviewing, commenting, and scoring the submissions against the requirements developed by Project Co (as approved by Contracting Authority) and providing the results of such assessment to Contracting Authority;
 - (iv) in consultation and coordination with the Equipment Steering Committee, selecting tenders, quotations or proposals from Not-In-Contract Equipment vendors;
 - (v) entering into all purchase orders and other contracts with respect to the Not-In-Contract Equipment; and

- (vi) providing such documentation as Contracting Authority requires, acting reasonably, to discharge Project Co's obligations under this Section 21;
- (VII) based on the tenders, quotations and proposals received from Not-In-Contract Equipment vendors, making recommendations to the Equipment Steering Committee for the procurement by Project Co of each item or bundle of items of Not-In-Contract Equipment (each is an "NIC Equipment Procurement Recommendation"). Each such recommendation shall include the following information:
 - (i) item description, item number, and quantities;
 - (ii) the manufacturer, model number, vendor, specifications and options for an item;
 - (iii) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for Contracting Authority, and any other benefits of the recommendation;
 - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
 - (v) details of the warranties, vendor installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or vendor;
 - (vi) details of training for all applicable Contracting Authority staff;
 - (vii) Not-In-Contract Equipment acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Not-In-Contract Equipment vendor;
 - (viii) the dates and times when the items shall be delivered to the Site;
 - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, charge-backs, credits, price adjustments or any other allowances obtained across all categories of Not-In-Contract Equipment that effectively reduce the net selling price of such Not-In-Contract Equipment;
 - (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
 - (xi) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;

- (xii) any Taxes applicable to the items;
 - (xiii) if so requested by the Contracting Authority Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as Contracting Authority may reasonably request, all of which shall be provided on a fully transparent and open basis to the Contracting Authority Representative; and
 - (xiv) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items;
- (iii) Installation and Commissioning

Except as otherwise expressly set out in this Project Agreement, Project Co shall:

- (A) install, commission and complete all architectural, structural, mechanical, electrical, information and communication technology as well as any other building systems to enable the installation and operation of all Equipment, SolGen Equipment and Existing Equipment in accordance with the planning and design documentation to be developed by Project Co in accordance with Section 21.4(a)(i);
- (B) coordinate and collaborate with Contracting Authority in respect of any and all matters relating to the delivery, installation and commissioning of Existing Equipment and SolGen Equipment including the storage of Existing Equipment and SolGen Equipment and coordination with any applicable Existing Equipment or SolGen Equipment vendors;
- (C) in accordance with manufacturer's instructions and Schedule 15 – Output Specifications, receive, expedite, offload, store, unpack, handle, deliver to the location of installation, assemble and install all Equipment and dispose of any associated waste and packaging;
- (D) coordinate the commissioning and acceptance testing procedures of Equipment, SolGen Equipment and Existing Equipment in accordance with the manufacturers' requirements proposed by the relevant Equipment and Existing Equipment vendors or manufacturers (including, without limitation, the results and guidelines for acceptance);
- (E) complete the commissioning of all Equipment in accordance with the Final Commissioning Program (including, but not limited to Equipment acceptance testing and calibration, start up, training of Contracting Authority's staff and the compilation of all operations and maintenance manuals);
- (F) develop and collate As-Built Drawings and specifications and other Design Data, confirming the as-built conditions of Equipment;

- (G) collate the warranty documentation, operations and maintenance manuals, supplies, spare parts and start-up consumables of all In-Contract Equipment;
 - (H) coordinate with the relevant vendors or manufacturers of Not-In-Contract Equipment, the warranty conditions, service agreements, supplies, spare parts and start-up consumables; and
 - (I) at its sole cost, install or cause an equipment vendor to install, the Not-In-Contract Equipment and such installation costs shall not be included in the Monthly Equipment Payment.
- (b) In response to any NIC Equipment Procurement Recommendation made by Project Co, Contracting Authority may do any of the following with respect of any, some or all of the applicable items of Not-In-Contract Equipment:
- (i) instruct Project Co to proceed with the procurement and to make the applicable vendor, manufacturer and/or Not-In-Contract Equipment selection and award;
 - (ii) withdraw the requirement for Project Co to proceed with the procurement;
 - (iii) increase or decrease the quantities of any items, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured; and/or
 - (iv) reject any Not-In-Contract Equipment vendor or item.
- (c) Project Co shall provide to the Contracting Authority Representative, as soon as reasonably practicable following a request therefor, such additional information as Contracting Authority may require in respect of any NIC Equipment Procurement Recommendation made by Project Co.
- (d) [Intentionally Deleted].
- (e) For the purpose of achieving Substantial Completion, all Equipment, SolGen Equipment and Existing Equipment that is required to be commissioned prior to the Substantial Completion Date pursuant to this Project Agreement must be successfully commissioned by Project Co in accordance with the Final Commissioning Program, unless such requirement is waived by Contracting Authority in its sole discretion. Provided that, in respect of any such item of Equipment, SolGen Equipment or Existing Equipment, such requirements shall be waived by Contracting Authority if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of any such item of Equipment, SolGen Equipment or Existing Equipment referred to in this Section 21.4(e) due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer or by SolGen in respect of the SolGen Equipment.
- (f) [Intentionally Deleted.]
- (g) All information related to Equipment, SolGen Equipment or Existing Equipment to be developed by Project Co pursuant to this Section 21 which may or does require Contracting Authority's review (whether or not specifically requested by Contracting Authority) shall be Works Submittals and shall be subject to the provisions of Schedule 10 – Review Procedure. For clarity, such information

includes, but is not limited to, design development and construction documentation incorporating Equipment, SolGen Equipment or Existing Equipment information, all technical specifications related to Not In-Contract Equipment and to In-Contract Equipment that Contracting Authority may be required to approve under this Section 21.

- (h) Project Co shall establish, maintain and manage the budget for the Not-In-Contract Equipment and Existing Equipment.
- (i) Project Co shall, subject to the prior approval of Contracting Authority, in accordance with each relevant contract and/or purchase order for an item or any items of Not-In-Contract Equipment, cause the Not-In-Contract Equipment vendor or manufacturer to comply with the applicable design, delivery (including delivery to the location of installation), offloading, handling, assembly, installation and commissioning (including, but not limited to, testing and calibration, start up, training and acceptance) schedule and requirements included in such contract and/or purchase order as well as any applicable warranty and maintenance requirements.
- (j) Project Co shall be responsible for (A) causing each Not-In-Contract equipment vendor or manufacturer to deliver and perform all required services in respect of each item of Not-In-Contract Equipment; and (B) ensuring the successful completion of all commissioning activities with respect to Not-In-Contract Equipment (including, but not limited to, Not-In-Contract Equipment testing, calibration, start up, training and acceptance).
- (k) Project Co shall cause all Not-In-Contract Equipment Vendors and manufacturers (including, for clarity, their employees, agents, representatives, contractors and subcontractors) who access the Site to coordinate and comply with the instructions of Project Co relating to matters of health and safety on the Site.

21.5 Additional Project Co Equipment Responsibilities

- (a) Project Co:
 - (i) shall, until the fulfillment of all of Project Co's Equipment or Existing Equipment obligations in respect of the Works, from time to time, revise, update and maintain the Master Equipment List;
 - (ii) shall schedule, lead and keep the minutes of user group meetings in relation to Equipment and Existing Equipment in order to collect user feedback on the Design Data produced by Project Co as well as on Equipment and SolGen Equipment technical specifications to be attached to the relevant procurement documents developed by Contracting Authority or Project Co; and
 - (iii) shall, as required by Contracting Authority from time to time, provide access to the Site and the Facility to any and all Equipment, SolGen Equipment and Existing Equipment vendors and manufacturers (including, for clarity, each of their employees, agents, representatives, contractors and subcontractors) to allow them to deliver, unpack, assemble, install and/or commission any and all applicable Equipment, SolGen Equipment and Existing Equipment and perform any other works related to such Equipment, SolGen Equipment and Existing Equipment in connection with the Project.

- (iv) and not Contracting Authority, shall be liable as “purchaser” to the vendor or manufacturer under every purchase order, contract and manufacturer’s installation invoice related to Not-In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms.

21.6 Minimizing Disruptions

- (a) Project Co shall perform all of its obligations under this Section 21 so as to minimize, to the greatest extent reasonably possible, any disruption of the Works and the Contracting Authority Activities. Project Co acknowledges and agrees that such activities may require work outside of normal working hours in order to accommodate the efficient operation of the Facility and the Existing Facilities.

21.7 Equipment Training

- (a) For and in respect of each item of Equipment, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item’s proper operation and maintenance for all applicable Contracting Authority staff.
- (b) Contracting Authority shall, or shall cause, a Contracting Authority Party or a representative of SolGen, as applicable, to make its staff at the Facility to be available for training purposes in accordance with the Works Schedule and the Final Commissioning Program, as applicable.

21.8 Scheduling of Equipment, SolGen Equipment and Existing Equipment Related Activities

- (a) Project Co shall, as part of the Draft Works Schedule submitted in accordance with Section 20.2(b), and in consultation with Contracting Authority and SolGen, prepare and submit to Contracting Authority for approval a complete, detailed and computerized schedule outlining all activities associated with Equipment, SolGen Equipment and Existing Equipment that supports the completion of the Works (the “**Equipment Schedule**”), including, but not limited to, as applicable, the design, planning, procurement, transfer, delivery, assembly, installation and commissioning of all Equipment, SolGen Equipment and Existing Equipment, irrespective of whether such activities are being carried out by Project Co or Contracting Authority pursuant to this Project Agreement. At a minimum, Project Co shall include in the Equipment Schedule the sequencing and timing of all activities relating to:
 - (i) Equipment, SolGen Equipment and Existing Equipment design and planning, including, but not limited to, all related activities to be completed pursuant to the Review Procedure;
 - (ii) each procurement activity associated with the individual items or bundles of Equipment and Existing Equipment;
 - (iii) the completion of all Works to enable the installation of Equipment, SolGen Equipment and Existing Equipment;
 - (iv) the decontamination, decommissioning, de-installation and disconnection of Existing Equipment;

- (v) the delivery, transfer, assembly, installation, commissioning and acceptance of Equipment, SolGen Equipment and Existing Equipment in accordance with the Final Commissioning Program.
- (b) Project Co shall ensure that, in addition to the inclusion of all of the activities described in Section 21.8, the draft Equipment Schedule reflects that:
 - (i) the procurement of Not-In-Contract Equipment and Existing Equipment shall be completed in separate phases comprising the following main groupings of Not-In-Contract Equipment and Existing Equipment:
 - (A) items with a significant impact on the design of the Facility as a whole;
 - (B) longer procurement lead items; and
 - (C) all remaining items not identified in Sections 21.8(b)(i)(A)-(B).
 - (ii) in coordination with Contracting Authority, Project Co bundles the items of Not-In-Contract Equipment and Existing Equipment in each of the main groupings referred to in Section 21.8(b)(i) into procurement packages containing similar equipment; and
 - (iii) all planning related to the Equipment and Existing Equipment (without limiting any of the provisions set out in Section 21 related to planning) shall be based in principle in each case on the latest reasonable date for Contracting Authority undertaking any of the activities related to equipment described in Section 21.8(a).
- (c) The draft Equipment Schedule shall clearly identify all of the activities and the timing and sequencing of all of the decisions, reviews and approvals required from Contracting Authority in respect of Equipment, SolGen Equipment and Existing Equipment. When agreed to by the Parties, the draft Equipment Schedule shall become the Equipment Schedule, which shall be included in the Works Schedule. Subject to Section 21.8(d), any changes to the Equipment Schedule shall require the prior written approval of Contracting Authority.
- (d) Following the acceptance of the Equipment Schedule by Contracting Authority, which, for clarity, may be prior to the Parties' agreement upon the Works Schedule pursuant to Section 13.2(d), Project Co shall submit to Contracting Authority any subsequent proposed changes to the Equipment Schedule and accept comments from Contracting Authority in accordance with the process set out in Schedule 10 – Review Procedure, provided that Contracting Authority shall have sufficient time, as reasonably determined by Contracting Authority, to (i) review and comment on such proposed changes (taking into account the resources available to Contracting Authority to conduct such review at that time), and (ii) upon any acceptance of those changes by Contracting Authority (or any revised changes incorporating the comments of Contracting Authority), to implement them.
- (e) Project Co shall not be permitted to propose any change to the Equipment Schedule in respect of any, some or all Equipment and Existing Equipment if Contracting Authority has fully complied with the related and previously established timelines in the Equipment Schedule and Contracting Authority, in its sole discretion, determines that such a change may result in adverse commercial consequences to it or to the Project.

- (f) If Contracting Authority, from time to time, reasonably requires any change(s) to the Equipment Schedule, Contracting Authority shall notify Project Co of such change(s) and, provided that the implementation of such change(s) will not have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule, Project Co shall implement such change(s).

21.9 Maintenance of In-Contract Equipment, Not-In-Contract Equipment, SolGen Equipment and Existing Equipment

- (a) Project Co is responsible for the maintenance, replacement and refurbishment of In-Contract Equipment, as more particularly described in Schedule 15 - Output Specifications.
- (b) Project Co is not responsible for the maintenance, replacement or refurbishment of Not-In-Contract Equipment, SolGen Equipment or Existing Equipment except as set out in Schedule 15 - Output Specifications or in this Section 21.
- (c) Project Co is responsible for providing certain furniture cleaning and equipment services in respect of Not-In-Contract-Equipment as more particularly described in Schedule 15 - Output Specifications.

21.10 Payment for Not-In-Contract Equipment

- (a) Beginning 180 days following formation of the Equipment Steering Committee, Project Co shall deliver to Contracting Authority an invoice (an "Equipment Invoice"), no later than 5 days after the end of each month in which Project Co has received an invoice from an Equipment vendor, for the total cost of purchasing all Not-In-Contract Equipment in respect of the immediately preceding month (the "Monthly Equipment Payment"). Project Co shall concurrently deliver a copy of the Equipment Invoice to the Equipment Steering Committee. For clarity, the Equipment Invoice shall not include any financing or installation costs. Project Co shall concurrently deliver any documentation requested by Contracting Authority, acting reasonably, detailing the costs of the Not-In-Contract Equipment.
- (b) Project Co shall, 90 days after the formation of the Equipment Steering Committee, deliver a list of the estimated amount of each Monthly Equipment Payment and a schedule detailing the approximate timing of all Monthly Equipment Payments to the Equipment Steering Committee (the "Monthly Equipment Payment Estimate"). Project Co shall update the Monthly Equipment Payment Estimate bi-monthly, or earlier upon request from the Equipment Steering Committee.
- (c) If Contracting Authority or the Equipment Steering Committee disputes all or any part of the Equipment Invoice, Contracting Authority shall notify Project Co in writing of that part of the amounts which Contracting Authority or the Equipment Steering Committee disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute relating to the Equipment Invoice within ten Business Days of the delivery of the notice of the Dispute to Project Co. If Contracting Authority and Project Co fail to so resolve the Dispute within such period,
 - (i) the Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (ii) notwithstanding the Dispute, Contracting Authority shall pay Project Co for the full amount of the Equipment Invoice.

Following resolution of the Dispute, any amount which has been paid by Contracting Authority that is determined not to have been payable shall be paid forthwith by Project Co to Contracting Authority, and Project Co shall indemnify Contracting Authority from and against any damages suffered or incurred resulting from such overpayment by Contracting Authority as provided for at Section 44.1(e) on the basis that the due date was the date of the overpayment by Contracting Authority.

- (d) Project Co shall ensure that the Monthly Equipment Payment does not include any financing costs. Project Co shall be solely responsible for any financing costs relating to the Not-In-Contract Equipment and shall promptly reimburse Contracting Authority for any amounts of financing that Contracting Authority determines have been included in the Monthly Equipment Payment. Project Co represents and warrants that no financing costs relating to the procurement of Not-In-Contract Equipment have been included in the Financial Model.

21.11 Monthly Equipment Payment

- (a) Subject to Section 21.10, no later than 60 days, or on such date as the Parties may otherwise agree in writing, following receipt of an Equipment Invoice, Contracting Authority shall pay to Project Co the Monthly Equipment Payment specified in the Equipment Invoice.

22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN

22.1 LEED Design and Construction Obligations

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED BD+C Silver Rating, and, in so doing, Project Co shall at a minimum achieve the LEED credits identified as mandatory and prerequisites in Section 4.3.3 of Part I of Schedule 15 - Output Specifications (the “LEED Mandatory and Prerequisites Credits”).

22.2 LEED Progress Reports

- (a) As part of each Works Report, Project Co shall submit a progress report comparing actual construction and procurement activities with the LEED BD+C Silver Rating requirements.

22.3 LEED BD+C Silver Rating and LEED Mandatory and Prerequisites Credits

- (a) Contracting Authority (i) acknowledges that, prior to the date of this Project Agreement, Contracting Authority has caused the Project to be registered with CaGBC, and (ii) agrees to transfer such registration to Project Co following the date of this Project Agreement. Project Co acknowledges and confirms that as of the date of this Project Agreement the Project is registered with CaGBC and that Project Co is satisfied that the registration is valid, and is effective as of the date that it was made.
- (b) If there is a change in the requirements for achievement of LEED BD+C Silver Rating under the LEED BD+C Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify Contracting Authority of such change and such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

- (c) Project Co shall apply to the CaGBC to obtain LEED BD+C Silver Rating for the Facility as soon as possible.
- (d) In the event that:
 - (i) Project Co fails to achieve the LEED Mandatory and Prerequisites Credits; or
a LEED BD+C Silver Rating is not obtained within 24 months after the Substantial Completion Date,

other than as a direct result of any act or omission of Contracting Authority or any Contracting Authority Party, Project Co shall pay to Contracting Authority liquidated damages in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Contracting Authority will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of a failure by Project Co to achieve the LEED Mandatory and Prerequisites Credits or the LEED BD+C Silver Rating and, for greater certainty, a failure by Project Co to achieve the LEED Mandatory and Prerequisites Credits or the LEED BD+C Silver Rating shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.

22.4 Greenhouse Gas Credits

- (a) Any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by Contracting Authority and Project Co shall have no entitlement to any of such credits whatsoever.

22.5 Energy Matters

- (a) Each of Project Co and Contracting Authority shall comply with the provisions of Schedule 36 - Energy Matters.

23. INDEPENDENT CERTIFIER AND COMBINED DISPUTE RESOLUTION BOARD

23.1 Appointment of Independent Certifier

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement, and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

23.2 Role of Independent Certifier

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 – Independent Certifier Agreement.

23.3 Changes to Terms of Appointment of Independent Certifier

- (a) Neither Contracting Authority nor Project Co shall without the other's prior written approval:
- (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

23.4 Right to Change Appointment of the Independent Certifier

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project Agreement unless agreed to in writing by both Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' notice to the Independent Certifier. If such notice is given, then, pursuant to Section 23.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

23.5 Cooperation and Independent Certifier

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

23.6 Payment of Independent Certifier

- (a) Project Co and Contracting Authority shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

23.7 Replacement of Independent Certifier

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.

- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
- (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
 - (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

23.8 Security Clearance Check Requirements

- (a) Each employee and representative of the Independent Certifier attending at the Site or the Facility and involved in the Project (collectively, the “**IC’s Representatives**” and individually, an “**IC Representative**”) shall submit to a criminal name check through the Canadian Police Information Centre. In the event that any of the events specified in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements have occurred in respect of the IC's Representatives, Contracting Authority may, in its sole discretion, terminate the Independent Certifier's appointment unless (i) any such IC Representative's employment or engagement by the Independent Certifier is immediately terminated and evidence of termination thereof has been provided to Contracting Authority in writing within 5 Business Days of the occurrence of any of the events described in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements; or (ii) the Independent Certifier has satisfied Contracting Authority, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved in providing any of the “Functions” described in the Independent Certifier's Contract. If for reasons specified in this Section 23.8, Contracting Authority terminates the Independent Certifier and notice of such termination has been provided to Project Co, Project Co agrees that it shall not permit any of the IC's Representatives to have access to the Site or the Facility.

23.9 Combined Dispute Resolution Board

- (a) The Parties shall:
- (i) appoint and maintain the appointment of the CDB and ensure that the CDB is kept informed of the performance of the Parties' obligations under this Project Agreement and of any Disputes under this Project Agreement, pursuant to and in accordance with Schedule 27 – Dispute Resolution Procedure;
 - (ii) deliver the reports, notices and other documents to the CDB described in Schedule 27 – Dispute Resolution Procedure; and

- (iii) resolve Disputes under this Project Agreement using the CDB pursuant to and in accordance with Schedule 27 – Dispute Resolution Procedure.

24. COMMISSIONING AND COMPLETION

24.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning, and shall facilitate the performance of all Contracting Authority Commissioning, pursuant to the Final Commissioning Program.

24.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect to the Project Co Commissioning and the Contracting Authority Commissioning and shall provide a copy thereof to the Independent Certifier, the Contracting Authority Commissioning Consultant and the Contracting Authority Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
 - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
 - (B) Final Completion on or before the Scheduled Final Completion Date;
 - (ii) describe the requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities;
 - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Contracting Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by Contracting Authority;
 - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
 - (vi) include a schedule of each of the Project Co Commissioning Tests and the Contracting Authority Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the Contracting Authority Commissioning;

- (viii) provide for the re-verification of systems following the Contracting Authority Commissioning; and
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) Contracting Authority shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from Contracting Authority.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

24.3 Commencement of Project Co Commissioning

- (a) Project Co shall give 30 days’ written notice to the Independent Certifier, the Contracting Authority Commissioning Consultant and the Contracting Authority Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least 5 Business Days’ notice to, and shall invite, the Independent Certifier, the Contracting Authority Commissioning Consultant and the Contracting Authority Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the Contracting Authority Commissioning Consultant and the Contracting Authority Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
 - (ii) test methodology; and
 - (iii) expected test results.

24.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the “**10-Day Notice**”).
- (b) Project Co shall deliver notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of all of the requirements for Substantial Completion under this Project Agreement (the “**Substantial Completion Notice**”). The Substantial Completion Notice shall (i) describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, (ii) include as appendices all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, and (iii) include Project Co’s opinion that the conditions for issuance of the Substantial Completion Certificate under this Project Agreement have been satisfied.

- (c) Within two Business Days of receiving the Substantial Completion Notice from Project Co, the Independent Certifier shall review the Substantial Completion Notice to determine whether or not the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List. For the purposes of this Section 24.4(c), if the Substantial Completion Notice contains a Substantial Completion Deliverable that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for Substantial Completion under this Project Agreement have been satisfied, then such Substantial Completion Deliverable shall be deemed to have not been included as part of the Substantial Completion Notice. Following such review and determination by the Independent Certifier and before the expiry of such two Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:
- (i) confirming that the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the “**IC Substantial Completion Deliverables Confirmation**”); or
 - (ii) setting out a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an “**IC Substantial Completion Deliverables Deficiencies List**”).

If the Independent Certifier provides a notice to Project Co and Contracting Authority setting out an IC Substantial Completion Deliverables Deficiencies List pursuant to this Section 24.4(c), then Project Co shall subsequently submit a new and replacement version of the Substantial Completion Notice pursuant to Section 24.4(b), which, for greater certainty, includes all of the Substantial Completion Deliverables, and the process described in this Section 24.4(c) shall be repeated until the IC Substantial Completion Deliverables Confirmation is provided by the Independent Certifier to Project Co and Contracting Authority.

- (d) Contracting Authority shall, within five Business Days after receipt of the IC Substantial Completion Deliverables Confirmation, provide the Independent Certifier and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the Substantial Completion Certificate should not be issued.
- (e) Within five Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 24.4(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Minor Deficiencies or Seasonal Works exist, and to issue to Contracting Authority and to Project Co either:
- (i) the Substantial Completion Certificate, confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List and Seasonal Works List (if applicable) in accordance with Section 24.8; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.

- (f) Where the Independent Certifier has issued a report in accordance with Section 24.4(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, and for each subsequent application for Substantial Completion, Project Co shall submit a new 10-Day Notice and a new Substantial Completion Notice and the process described in Sections 24.4(c) to (f) inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

- (g) In the event the Substantial Completion Certificate has not been issued within 45 days after the delivery of a 10-Day Notice or the delivery of a Substantial Completion Notice, unless the Substantial Completion Certificate has not been issued as a result of a failure of the Independent Certifier or Contracting Authority to comply with its applicable obligations in Sections 24.4(c) to 24.4(e), inclusive, such 10-Day Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new 10-Day Notice in order to initiate a new application for Substantial Completion.
- (h) For greater certainty, the Independent Certifier’s decision to issue the IC Substantial Completion Deliverables Confirmation shall not limit or otherwise affect (i) any of Project Co’s obligations under this Project Agreement to satisfy the requirements of Substantial Completion or (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied pursuant to Section 24.4(d) and Section 24.4(e) respectively.
- (i) The Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date, and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to Schedule 27 - Dispute Resolution Procedure.
- (j) The submission of the Substantial Completion Notice by Project Co in accordance with Section 24.4(b) shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement, arising prior to the submission of the Substantial Completion Notice, except:
- (i) without limitation to the specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co

Party) arising prior to the submission of the Substantial Completion Notice and still unsettled; and

- (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

24.5 Operation and Maintenance Manuals and Warranties

- (a) Project Co shall prepare and deliver to Contracting Authority all necessary operation and maintenance manuals for the Facility 30 days prior to the Substantial Completion Date and shall ensure that Contracting Authority has the direct benefit of all manufacturers' warranties for the Facility. From and after such date and throughout the remainder of the Project Term, Project Co shall prepare and keep current, and at all reasonable times make available to Contracting Authority, such operation and maintenance manuals and all other such manuals prepared from time to time for the Facility.

24.6 Contracting Authority Commissioning

- (a) The Parties acknowledge that the Contracting Authority Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give Contracting Authority, SolGen, other Province Persons and any employees and subcontractors of any of the foregoing full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable Contracting Authority, SolGen and other Province Persons to undertake the Contracting Authority Commissioning in accordance with the Final Commissioning Program. Contracting Authority shall comply, and shall ensure that SolGen and all other Province Persons comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Contracting Authority Commissioning.
- (b) Contracting Authority acknowledges that, during the Contracting Authority Commissioning Period, Project Co and each Subcontractor will be active in the Facility and, if applicable, in the Existing Facilities, in the completion and rectification of Minor Deficiencies and the completion of Project Co Commissioning and Seasonal Works, and Contracting Authority shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Contracting Authority Commissioning Period, Project Co and its Subcontractors shall cooperate with Contracting Authority, SolGen and all other Province Persons and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities are able to be completed in the timeframe for completion set out in the Final Commissioning Program.

24.7 Countdown Notice and Substantial Completion Deliverables

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) In accordance with Section 20.5(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within 15 Business Days of the Independent Certifier’s receipt of the Countdown Notice in accordance with Section 24.7(a), the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority a list of deliverables (the “**Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 24.4(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the “**Substantial Completion Deliverables**”).
- (e) From time to time until the date that is 60 days prior to the Anticipated Substantial Completion Date, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the Substantial Completion Deliverables List, including to set out any additional Substantial Completion Deliverables not identified in the Substantial Completion Deliverables List pursuant to Section 24.7(d). Each amended Substantial Completion Deliverables List shall, following its preparation, be deemed to be the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.
- (f) For greater certainty, nothing in Section 24.7(d) or Section 24.7(e) limits or otherwise affects any of Project Co’s obligations under this Project Agreement to satisfy the requirements of Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the Substantial Completion Notice pursuant to Section 24.4(b).

24.8 Minor Deficiencies and Seasonal Works

- (a) In the event that Minor Deficiencies or Seasonal Works exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with and being informed by the respective views of Project Co and Contracting Authority, shall prepare:
 - (i) a list of all Minor Deficiencies (the “**Minor Deficiencies List**”); and
 - (ii) a list of all Seasonal Works (the “**Seasonal Works List**”),

in each case identified at that time and an estimate of the cost for Contracting Authority, and the time for Project Co, to complete and rectify such Minor Deficiencies and to complete the Seasonal Works.

- (b) Contracting Authority may withhold from the Substantial Completion Payment:
 - (i) a holdback amount that is equal to **[REDACTED]**% of the amount estimated by the Independent Certifier for Contracting Authority to complete and rectify all of the Minor Deficiencies identified in the Minor Deficiencies List (the “**Completion Holdback**”); and
 - (ii) a holdback amount that is equal to **[REDACTED]**% of the amount estimated by the Independent Certifier for Contracting Authority to complete all of the Seasonal Works identified in the Seasonal Works List (the “**Seasonal Works Holdback**”),

which holdbacks shall be held in an interest bearing account.

- (c) The Minor Deficiencies List and the Seasonal Works List will contain the schedule for the completion and rectification of each Minor Deficiency and the completion of the Seasonal Works, respectively, before the expiry of each associated Minor Deficiency Completion Period and the expiry of the Seasonal Works Completion Period. Project Co shall schedule the completion and rectification of Minor Deficiencies and Seasonal Works so as to minimize, to the greatest extent reasonably possible, any impairment of Contracting Authority’s and SolGen’s use and enjoyment of the Facility or disruption of the Project Operations or the performance of the Correctional Complex Activities.
- (d) The Independent Certifier must prepare the Minor Deficiencies List and the Seasonal Works List in relation to the Substantial Completion Notice as soon as reasonably practicable and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies or Seasonal Works.
- (e) With regards to:
 - (i) the Minor Deficiencies List, by no later than the last to occur of (A) the date that is 20 Business Days before the expiry of the last Minor Deficiency Completion Period, and (B) the anticipated date for when all Minor Deficiencies shall be completed and rectified after the expiry of the last Minor Deficiency Completion Period set out in any notice delivered by Project Co to Contracting Authority in accordance with Section 24.9(c); and
 - (ii) the Seasonal Works List, by no later than 20 Business Days prior to the Anticipated Final Completion Date,

Contracting Authority may by giving notice to the Independent Certifier and Project Co require the Independent Certifier to amend, in consultation with and being informed by the respective views of Project Co and Contracting Authority, each of the Minor Deficiencies List and the Seasonal Works List, as the case may be, on one occasion to include a list of any and all Minor Deficiencies and Seasonal Works, as applicable, that were identified after the preparation of, or not included in, the Minor Deficiencies List or the Seasonal Works List, as applicable, pursuant to Section 24.8(a). The Independent Certifier shall prepare the amended Minor Deficiencies List and Seasonal Works List, as the case may be, as soon as reasonably practicable and, in any event, within 10 Business Days of such notice given by Contracting Authority. The amended Minor Deficiencies List and

Seasonal Works List shall, in each case following its preparation, be deemed to be the Minor Deficiencies List or the Seasonal Works List, as the case may be, for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 24.8 to 24.10 (inclusive). The amount of the Completion Holdback and the Seasonal Works Holdback, as applicable, shall not be affected by the amended Minor Deficiencies List or Seasonal Works List.

- (f) Where the Minor Deficiencies List or the Seasonal Works List is required to be amended pursuant to Section 24.8(e), the Independent Certifier shall specify a completion and rectification time for any newly added Minor Deficiencies and Seasonal Works that is no greater than 10 Business Days from the date of the issuance of such amended Minor Deficiencies List or Seasonal Works List, as applicable, or such longer time period as agreed by the Parties.
- (g) Contracting Authority may, in its sole discretion, waive any requirement for Substantial Completion (including with respect to Equipment, Existing Equipment or SolGen Equipment) and, in such an event, the failure to meet any such requirement shall constitute a Minor Deficiency or Seasonal Works, as the case may be.
- (h) Nothing in this Section 24.8 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments, subject to and in accordance with Schedule 20 – Payment Mechanism.

24.9 Rectification of Minor Deficiencies, Completion of Seasonal Works

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Correctional Complex Activities:
 - (i) complete and rectify all Minor Deficiencies:
 - (A) within 90 days of the issuance of the Minor Deficiencies List pursuant to Section 24.8(a) for all Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
 - (B) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List; and
 - (ii) complete all Seasonal Works no later than 12 months following the Substantial Completion Date.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies and the completion of the Seasonal Works before the expiry of the Minor Deficiency Completion Periods and the Seasonal Works Completion Period respectively may require work outside of normal working hours in order to accommodate the efficient operation of the Facility and the Existing Facilities.
- (c) If at any time Project Co becomes aware that it will be unable to complete and rectify all Minor Deficiencies before the expiry of the last Minor Deficiency Completion Period, then, without limiting or prejudice to any right of Contracting Authority (including pursuant to Section 24.10(a)) or obligation or liability of Project Co under this Project Agreement whatsoever, Project Co shall

promptly deliver notice to Contracting Authority advising Contracting Authority of such delay and providing an anticipated date for when all Minor Deficiencies shall be completed and rectified after the expiry of the last Minor Deficiency Completion Period. For greater certainty, no such notice shall vary, amend or otherwise modify any Minor Deficiency Completion Period.

24.10 Failure to Rectify Minor Deficiencies and Complete Seasonal Works and Release of Works Holdbacks

- (a) If Project Co fails to either complete and rectify any Minor Deficiency before the expiry of the associated Minor Deficiency Completion Period or to complete the Seasonal Works before the expiry of the Seasonal Works Completion Period, then upon the delivery of not less than five Business Days prior notice to Project Co, Contracting Authority may, in its sole discretion, engage others to perform the work necessary to complete and rectify such Minor Deficiency or complete such Seasonal Works at the risk and cost of Project Co, and, in such an event, Contracting Authority may deduct such cost from the Completion Holdback or the Seasonal Works Holdback, as the case may be, and interest accrued thereon.
- (b) Upon the later of (A) the date of the completion and rectification of [REDACTED]% of the Minor Deficiencies set out in the Minor Deficiencies List, and (B) the date the value to complete and rectify the Minor Deficiencies as set out in the Minor Deficiencies List that have been completed and rectified is greater than or equal to an amount that is [REDACTED]% of the total value to complete and rectify all of the Minor Deficiencies as set out in the Minor Deficiencies List, all as certified by the Independent Certifier (taking into consideration Contracting Authority's opinion as to whether such Minor Deficiencies have been completed and rectified), then Project Co may request in writing that Contracting Authority release to Project Co an amount equal to [REDACTED]% of the amount of the Completion Holdback (without any interest accrued thereon but with applicable HST) less any amounts deducted in accordance with Section 24.10(a) in respect of any completed Minor Deficiencies. Contracting Authority shall release such amount to Project Co within two Business Days of Contracting Authority's receipt of such written request; and
- (c) Upon the later of (A) the date of the completion and rectification of [REDACTED]% of the Minor Deficiencies set out in the Minor Deficiencies List, and (B) the date the value to complete and rectify the Minor Deficiencies as set out in the Minor Deficiencies List that have been completed and rectified is greater than or equal to an amount that is [REDACTED]% of the total value to complete and rectify all of the Minor Deficiencies as set out in the Minor Deficiencies List, all as certified by the Independent Certifier (taking into consideration Contracting Authority's opinion as to whether such Minor Deficiencies have been completed and rectified), then Project Co may request in writing that Contracting Authority release to Project Co an amount equal to [REDACTED]% of the amount of the Completion Holdback initially withheld from the Substantial Completion Payment pursuant to Section 24.8(b)(i) (without any interest accrued thereon but with applicable HST) less any amounts deducted in accordance with Section 24.10(a) in respect of any completed Minor Deficiencies. Contracting Authority shall release such amount to Project Co within two Business Days of Contracting Authority's receipt of such written request.
- (d) When all Minor Deficiencies have been completed and rectified, as certified by the Independent Certifier, taking into consideration Contracting Authority's opinion as to whether such Minor Deficiencies have been completed and rectified (the "**Minor Deficiencies Certification Date**"), then within two Business Days after the Minor Deficiencies Certification Date, Contracting Authority shall release to Project Co the remaining amount of the Completion Holdback (together

with all interest accrued thereon and applicable HST) less any amounts deducted in accordance with Section 24.10(a).

- (e) When all Seasonal Works have been completed, as certified by the Independent Certifier, taking into consideration Contracting Authority's opinion as to whether such Seasonal Works have been completed (the "**Seasonal Works Certification Date**"), then within two Business Days after the Seasonal Works Certification Date, Contracting Authority shall release to Project Co the amount of the Seasonal Works Holdback (together with all interest accrued thereon and applicable HST) less any amounts deducted in accordance with Section 24.10(a).
- (f) Where Contracting Authority exercises its rights pursuant to Section 24.10(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, and interest, then Project Co shall promptly reimburse Contracting Authority for all such excess cost after receiving a written notice given by Contracting Authority requesting such reimbursement.

24.11 Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the "**Final Completion Countdown Notice**") to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Final Completion will be achieved (the "**Anticipated Final Completion Date**").
- (b) The Final Completion Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 90 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

24.12 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Final Completion Notice**") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies and the completion of the Seasonal Works, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) Contracting Authority shall, within five Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24.12(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for

the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:

- (i) the Final Completion Certificate, confirming the date of issue as the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.12(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.12(b) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier’s decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) The submission of the Final Completion Notice by Project Co in accordance with Section 24.12(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the Final Completion Notice, except:
- (i) without limitation to the specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the Final Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

24.13 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by Contracting Authority of any part of the Facility under the terms of this Project Agreement, and any commencement of any Correctional Complex Activities shall, in no way:

- (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List or Seasonal Works List; or
- (ii) be construed as an approval by Contracting Authority or any Province Person of the Works or the way in which they have been carried out.

24.14 Transition

- (a) Project Co shall, in cooperation with the Transition Subcommittee, plan, coordinate, manage, schedule, monitor and execute the physical transition from the Existing Facilities to the Facility, including the transfer and installation of all Existing Equipment from the Existing Facilities to the Facility (the “**Transition**”), in accordance with the Final Commissioning Program, Good Industry Practice, and the other requirements of this Project Agreement, including the requirements set forth in Section 21.
- (b) Project Co shall retain an experienced and reputable transition advisor, whose appointment shall be approved by Contracting Authority, acting reasonably, with experience planning and executing no fewer than 5 relocation assignments of similar size, scope and complexity (the “**Transition Advisor**”).
- (c) SolGen shall be responsible for transporting Inmates from the Existing Facilities to the Facility.

24.15 Transition Subcommittee

- (a) The Parties shall, within 180 days following Financial Close, establish a transition subcommittee of the Works Committee (the “**Transition Subcommittee**”) consisting of 3 representatives of each Party. The Transition Advisor shall be entitled to, but not required to, attend meetings of the Transition Subcommittee. Members of the Transition Subcommittee may invite, on prior notice to all members, such other advisors and consultants as they require from time to time to attend meetings and provide briefings to the Transition Subcommittee.
- (b) The Transition Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Transition, including issues related to decanting from the Existing Facilities to the Facility and the transfer and installation of all Existing Equipment Items.
- (c) The primary role of the Transition Subcommittee shall be to oversee and coordinate the Transition in a timely and efficient manner and in accordance with the Works Schedule, the Final Commissioning Program and the other applicable requirements of this Project Agreement.
- (d) The Transition Subcommittee shall be responsible for receiving and reviewing all matters related to the Transition and shall make recommendations to the Works Committee, which the Works Committee may accept or reject in its sole discretion.
- (e) The members of the Transition Subcommittee may adopt such procedures and practices for the conduct of the activities of the Transition Subcommittee as they consider appropriate from time to time.

- (f) Unless otherwise agreed, the Transition Subcommittee shall operate only until the Final Completion Date.

25. PROJECT CO SERVICE OBLIGATIONS

25.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the Project Co Services:
- (i) so as to satisfy the Output Specifications; and
 - (ii) in accordance with the other terms of this Project Agreement.

25.2 Commencement of Services

- (a) Project Co shall commence the Project Co Services on the day immediately after the Substantial Completion Date and shall provide the Project Co Services until the end of the Operational Term.

25.3 Coordination and No Disruption

- (a) Project Co shall perform the Project Co Services so as to coordinate with the operations of Contracting Authority and the Province Persons on the Site and in the Facility and shall use commercially reasonable efforts not to adversely interfere with the operations of SolGen and any Contracting Authority Party, including the performance of the Correctional Complex Activities.

25.4 No Closure of Facility

- (a) During the Operational Term, and notwithstanding any Relief Event or event of Force Majeure, Project Co shall not close all or any portion of the Facility in any circumstances other than as directed or approved by Contracting Authority in writing, acting reasonably.

25.5 Equipment for Project Co Services

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to perform the Project Co Services.

26. MAINTENANCE

26.1 Maintenance Plans

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to the Contracting Authority Representative for review pursuant to Schedule 10 – Review Procedure, the Scheduled Maintenance Plan for the first Contract Year and the Five Year Maintenance Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications annually thereafter.
- (b) Project Co shall perform the Maintenance Work as identified in the Scheduled Maintenance Plan, and, without limiting Project Co's other obligations in respect of the performance of the Project Operations, shall undertake all Maintenance Work:

- (i) in accordance with the Output Specifications;
- (ii) at the times scheduled for such Maintenance Work;
- (iii) in accordance with Good Industry Practice;
- (iv) in a manner that allows the Facility to remain operational at all times;
- (v) otherwise in accordance with the Scheduled Maintenance Plan; and
- (vi) in a manner consistent with the Lifecycle Replacement Schedule, as such may be amended or updated from time to time in accordance with the terms of this Project Agreement.

For clarity, the Scheduled Maintenance Plan shall take into consideration the anticipated Replacement Lifecycle of the Facility (including, for clarity, all of the elements thereof) for a period of 10 years following the Expiry Date (i) in order to enable the safe and proper use and operation of the Facility during the Operational Term in accordance with the Output Specifications and, (ii) in respect of each element of the Facility to allow such element to be used, or to ensure that such element does not need to be replaced, refreshed or refurbished, until the applicable Anticipated Lifecycle Replacement Year. For the purpose of this Project Agreement, an “element of the Facility” includes any material, system, equipment, structure, Equipment and Existing Equipment for which Project Co is required to provide Lifecycle Replacement and Refurbishment Services or any other thing of any type forming part of the Facility that has a service life but excludes any part of the Facility that Contracting Authority is responsible for maintaining, replacing, refreshing or refurbishing pursuant to the Project Agreement.

26.2 Revisions to Scheduled Maintenance Plan

- (a) No later than 30 days prior to the commencement of any calendar quarter, Project Co may submit to the Contracting Authority Representative a revision to the applicable Scheduled Maintenance Plan for the Contract Year in which the relevant calendar quarter year falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 10 – Review Procedure, then the Scheduled Maintenance Plan as so amended shall become the Scheduled Maintenance Plan in respect of that calendar quarter year.
- (b) Without limiting the comments that may be made pursuant to Schedule 10 – Review Procedure in relation to the submission of any Scheduled Maintenance Plan, Contracting Authority, acting reasonably, may comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” on any revision to any Scheduled Maintenance Plan pursuant to this Section 26.2 on the grounds that:
 - (i) performing the Scheduled Maintenance in the period or at the times suggested would (on the balance of probabilities) materially interfere with the performance of the Correctional Complex Activities and such material interference could be avoided or mitigated by Project Co rescheduling the Scheduled Maintenance;
 - (ii) performing the Scheduled Maintenance in the period or at the times suggested would (on the balance of probabilities) materially adversely affect the health or safety of any one or more Province Persons, Inmates, Visitors or other persons at the Existing Facilities or the

Facility and such material adverse effect could be avoided or mitigated by Project Co rescheduling the Scheduled Maintenance; or

- (iii) the period for performing the Scheduled Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant work.

26.3 Contracting Authority Change in Timing

- (a) Notwithstanding the establishment of or entitlement to proceed with any Scheduled Maintenance Plan, the Contracting Authority Representative may, at any time and from time to time, require Project Co to accelerate or defer any Scheduled Maintenance by giving written notice to Project Co not less than 15 Business Days prior to the scheduled date for performing such Scheduled Maintenance, which notice shall set out the time and periods at or during which Contracting Authority requires the Scheduled Maintenance to be performed.
- (b) Within 5 Business Days after receipt by Project Co of a notice referred to in Section 26.3(a), Project Co shall notify Contracting Authority of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferral (the “**Estimated Increased Maintenance Costs**”). Contracting Authority shall, within 5 Business Days after receipt by Contracting Authority of notification of the amount of the Estimated Increased Maintenance Costs, at its option, either confirm or withdraw its request to accelerate or defer the Scheduled Maintenance. If Contracting Authority does not respond within 5 Business Days, the request shall be deemed to have been withdrawn. Contracting Authority shall reimburse Project Co for any reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferral up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

26.4 Unscheduled Maintenance Work

- (a) If, in circumstances other than an Emergency, the need arises for Maintenance Work (excluding any work of a *de minimis* nature in respect of which this Section 26.4 does not apply) that is not scheduled to be carried out as part of the Scheduled Maintenance (“**Unscheduled Maintenance Work**”), Project Co shall promptly notify the Contracting Authority Representative of the proposed commencement date, the proposed hours of work and estimated duration of the Unscheduled Maintenance Work.
- (b) Project Co shall be entitled to perform the Unscheduled Maintenance Work at the time set out in its notice unless Contracting Authority, acting reasonably requires Project Co to defer or accelerate such Unscheduled Maintenance Work. For greater certainty, Project Co shall not be entitled to recover from Contracting Authority or any Province Person any costs or losses incurred by Project Co as a consequence of any deferral or acceleration of Unscheduled Maintenance Work, and nothing in this Section 26.4 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 – Payment Mechanism.

26.5 Emergency Maintenance Work

- (a) If, as a result of an Emergency, the need arises for Unscheduled Maintenance Work, Project Co may perform such Unscheduled Maintenance Work, provided that Project Co shall notify the Contracting Authority Representative as soon as possible (and in any event within 2 Business Days of the occurrence of the Emergency) of the reasons for and extent of the Unscheduled Maintenance Work.

- (b) Project Co shall use commercially reasonable efforts to minimize the duration of such Unscheduled Maintenance Work and its impact upon the performance of the Correctional Complex Activities. Project Co acknowledges and agrees that Unscheduled Maintenance Work may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.
- (c) Nothing in this Section 26.5 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

26.6 Other Maintenance Work

- (a) The Maintenance Work specified in the Scheduled Maintenance Plan shall not limit Project Co's obligations to perform Maintenance Work.

26.7 Plant Services

- (a) Prior to issuance of the Substantial Completion Certificate, Project Co shall create and commission the Plant Services and, throughout the Operational Term, shall maintain same as provided in the Output Specifications.

26.8 Performance Audits

- (a) If Contracting Authority reasonably believes that Project Co is in breach of its obligations with respect to Maintenance Work, including:
 - (i) under this Section 26;
 - (ii) under the Output Specifications; or
 - (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,

then Contracting Authority may cause to be performed, by an arm's length consultant appointed by Contracting Authority, a performance audit, inspection and survey of the Facility to assess whether the Facility has been and is being maintained by Project Co in accordance with Project Co's obligations (the "**Performance Audit**").

- (b) Contracting Authority shall notify Project Co in writing at least 10 Business Days prior to the date that Contracting Authority wishes to cause a Performance Audit to be undertaken. Contracting Authority shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 5 Business Days prior to the date originally requested by Contracting Authority, on the basis that performing the Performance Audit on the date originally requested by Contracting Authority would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, Contracting Authority shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Project Co Services. The cost of a Performance Audit, except where Section 26.8(d) applies, shall be borne by Contracting Authority. Project Co shall provide Contracting Authority, at no additional cost or charge, with any reasonable assistance required by Contracting Authority from time to time during the Performance Audit.

- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Contracting Authority shall:
- (i) provide Project Co with a written notice of non-compliance;
 - (ii) provide Project Co with instructions regarding rectification or Maintenance Work required to be performed by Project Co in order for Project Co to perform its obligations;
 - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance Work; and
 - (iv) be entitled to exercise all rights pursuant to Section 30.
- (e) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall:
- (i) perform any rectification or Maintenance Work required by Contracting Authority within a reasonable period of time specified by Contracting Authority, and be responsible for any costs incurred in performing such rectification or Maintenance Work; and
 - (ii) pay or reimburse Contracting Authority for the costs of the Performance Audit and any administrative costs incurred by Contracting Authority in relation to the Performance Audit.
- (f) Nothing in this Section 26.8 shall limit or restrict Contracting Authority's rights hereunder to perform any other performance audits, inspections and surveys at its own cost and expense.
- (g) Contracting Authority's right to cause a Performance Audit to be undertaken may not be exercised more than once every 180 days unless any Performance Audit performed in the preceding 12 month period shows that Project Co has not performed or is not performing its obligations in any material respect.

27. HUMAN RESOURCES

27.1 [INTENTIONALLY DELETED]

27.2 [INTENTIONALLY DELETED]

27.3 [INTENTIONALLY DELETED]

27.4 Admittance of Personnel

- (a) Contracting Authority shall have the right to refuse admittance to, or order the removal from the Site, the Existing Facilities and/or the Facility of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of Contracting Authority is likely to have an adverse effect on the performance of the Correctional Complex Activities or who, in the reasonable opinion of Contracting Authority is not a fit and proper person to be at the Site, the Existing Facilities and/or the Facility for any reason whatsoever, including a failure to comply with any applicable Contracting Authority policy, any immediate obligation of

Contracting Authority to ensure the safety and well-being of persons at the Site, the Existing Facilities and/or the Facility, or on the grounds of public interest and/or security.

27.5 Confirmation of Action

- (a) Any action taken under Section 27.4 shall promptly be confirmed by Contracting Authority to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

27.6 Notification of Personnel

- (a) If and when so requested by Contracting Authority, Project Co shall, within three Business Days of such request, provide a list of the names of, as applicable, all persons performing Project Operations or that it expects may require admission, in connection with this Project Agreement, to any premises occupied by Contracting Authority, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law, giving such other particulars as Contracting Authority may reasonably require.

27.7 Finality as to Admission

- (a) Any decision of Contracting Authority made pursuant to Section 27.4 shall be final and conclusive.

27.8 [INTENTIONALLY DELETED]

27.9 [INTENTIONALLY DELETED]

27.10 [INTENTIONALLY DELETED]

27.11 Security Clearance Check Requirements and Changes in Security Clearance Check Requirements

- (a) Project Co shall, at its sole cost and expense (except as otherwise specifically provided in Schedule 7 - Security Clearance Check Requirements), comply with the requirements of Schedule 7 - Security Clearance Check Requirements, and ensure that all Designated Project Co Employees, potential Project Co Staff and other persons outlined in Schedule 7 - Security Clearance Check Requirements comply with the requirements of such Schedule.

27.12 Staff Competency

- (a) Project Co shall ensure that:
 - (i) there shall at all times be a sufficient number of competent persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services with the requisite level of skill and experience to perform the Project Co Services in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Project Co Services;

- (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) who are engaged in the provision of the Project Co Services receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all (i) health and safety legislation, rules, procedures and requirements that apply to the Project Operations, and (ii) Authority Requirements; and
- (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services to ensure the proper performance of this Project Agreement.

27.13 Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that all potential Project Co Staff (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Project Co Services:
 - (i) are questioned concerning their Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form and any other document required by Schedule 7 - Security Clearance Check Requirements.

27.14 Disciplinary Action

- (a) Contracting Authority, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or, in the opinion of Contracting Authority, is incompetent or negligent in the performance of duties or whose presence or conduct on the Site, the Existing Facilities, and/or the Facility, or at work is otherwise considered by Contracting Authority to be undesirable or to constitute a threat to the health and/or safety of any person at the Site, the Existing Facilities and/or the Facility or would otherwise adversely affect the integrity of the correctional system. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise Contracting Authority in writing of the outcome of any disciplinary action taken in respect of such person, to the extent such notification is permitted by Applicable Law.

27.15 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by Project Co and by all Project Co Parties, and that each of them shall comply and cause compliance with, human resources policies and procedures covering all relevant matters relating to the Project Operations (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, the Security Clearance Check Requirements and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to Contracting Authority on a timely basis.

- (b) If Contracting Authority provides any comments on, or requests any amendments, modifications or changes to, the policies or procedures maintained pursuant to Section 27.15(a), Project Co shall consider such comments and amendments, modifications and changes and discuss them with Contracting Authority. Project Co shall incorporate those comments, amendments, modifications and changes with which it agrees, acting reasonably, to the extent that such comments, amendments, modifications or changes comply with Applicable Laws.

27.16 Management Organizations

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to Contracting Authority, as required to keep such information current, the names of the management teams responsible for the provision of the Project Co Services.

27.17 Adherence to SolGen Policies

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with any regulations, policies or directions set by any Governmental Authority related to labour, employment and/or human resources.

27.18 [INTENTIONALLY DELETED]**27.19 Health Screening**

- (a) [Intentionally Deleted.]
- (b) Project Co shall ensure (to the extent permitted by Applicable Law) that all Project Co Staff (including, for greater certainty, permanent, temporary, full-time and part-time Project Co Staff) and persons who may otherwise perform any of the Project Co Services shall undergo such medical screening, examination or treatment and provide confirmation of such testing to Contracting Authority during the currency of this Project Agreement, when reasonably requested to do so by Contracting Authority, as required to ensure that Contracting Authority is able to comply with Applicable Law and in respect of the health and well-being of Province Persons, Inmates, Visitors and other persons at the Facility. Project Co shall take reasonable precautions to ensure that all permanent, temporary, full-time and part-time Project Co Staff and any other persons that may perform any of the Project Co Services are, at all times, in such medical condition that they do not pose a risk, threat or danger to the health and/or well being of any Province Person, Inmate, Visitor or other person at the Facility.

27.20 Retention of Screening Records

- (a) Project Co agrees that (to the extent permitted by Applicable Law) it shall hold and shall ensure that the relevant Project Co Party holds records of all screenings, examinations or treatments referred to in this Section 27 in strict confidence and shall produce, and shall ensure that the relevant Project Co Party produces such records (subject to requirements under Applicable Law) for inspection by Contracting Authority upon request by the Contracting Authority Representative provided that no such inspection shall take place unless the relevant employee or person has given his written consent to such inspection (to the extent such consent is required by Applicable Law).

27.21 Orientation Procedure

- (a) Project Co shall not cause, authorize or permit any person engaged or employed by Project Co or any Project Co Party in the delivery of the Project Co Services to commence the performance of their obligations until they have completed the orientation procedure in accordance with Section 3.2.3(e) of Part IV of Schedule 15 – Output Specifications.

27.22 Employee Training

- (a) Project Co shall, at its own cost and expense, provide training to the Designated Project Co Employees in accordance with Section 3.2.3 of Part IV of Schedule 15 – Output Specifications. This training shall be designed and shall be of such quality so as to provide Designated Project Co Employees with comprehensive coverage of the operational and security aspects of the Facility.

28. STOCKS, CONSUMABLES, MATERIAL AND EQUIPMENT

28.1 Standards

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Subcontractor in connection with the Project Co Services to be:
 - (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
 - (ii) of the type specified in the Output Specifications, if applicable; and
 - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the Contracting Authority Representative, supply to the Contracting Authority Representative evidence to demonstrate its compliance with this Section 28.1(a).

- (b) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Project Agreement.

28.2 Hazardous Substances and Materials

- (a) Except to the extent required pursuant to the Output Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Facility, or cause, authorize or permit any Project Co Party to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:
 - (i) material damage to the Facility;
 - (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Facility;
 - (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Facility; or

- (iv) an adverse effect on the health or well-being of any person at the Facility, including any Province Person, Inmate or Visitor,

and shall use commercially reasonable efforts to ensure, by directions to staff and otherwise, that all materials, equipment or apparatus in, at or on the Facility are operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.

- (b) Except for articles or things commonly used or generated in correctional facilities, Project Co shall not bring, install, keep, maintain or use, or cause, authorize or permit any person to bring, install, keep, maintain or use in or on the Facility any Hazardous Substance or hazardous equipment without the prior written consent of Contracting Authority and unless Project Co has complied with Applicable Law.
- (c) Where applicable, Project Co shall comply with any applicable Contracting Authority policies and Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
 - (i) maintaining a library of MSDS on the Site and making MSDS labels available to all workers and Contracting Authority, and making and posting workplace labels where applicable, for all materials designated hazardous by Applicable Law relating to WHMIS; and
 - (ii) ensuring that Hazardous Substances shipped by Project Co or any Project Co Party are shipped in accordance with Applicable Law governing the transportation of Hazardous Substances,
- (d) Contracting Authority shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by Contracting Authority as required by Applicable Law regarding WHMIS and the transportation of Hazardous Substances.
- (e) Project Co shall:
 - (i) ensure that all Hazardous Substances and hazardous materials and equipment used or stored on the Site by Project Co or any Project Co Party are kept in accordance with Applicable Law, Good Industry Practice, properly and securely labeled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
 - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Facility or into any conducting media or device serving the Facility, including to:
 - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and
 - (B) prevent any adverse effect on the health or well-being of any person at the Facility, including any Province Person, Inmate or Visitor,

in so far as such Hazardous Substance is, or should be, under the control of Project Co or any Project Co Party pursuant to this Project Agreement.

- (f) This Section 28.2 applies from and after Substantial Completion, and shall not extend to Hazardous Substances or hazardous equipment, materials or apparatus that are produced, brought, installed, kept, maintained or used in relation to the Correctional Complex Activities, except to the extent that such Hazardous Substances or hazardous equipment, materials or apparatus are, or should be, the responsibility of Project Co or under the control of Project Co under this Project Agreement.
- (g) For greater certainty, in the event of a claim relating to Contamination caused by the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, each Party shall bear a proportion of liability based on that Party's degree of fault as agreed by the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure.

28.3 Change in Hazardous Materials Policies

- (a) Contracting Authority shall notify Project Co of any proposed change in any applicable Contracting Authority policies regarding WHMIS and the transportation of Hazardous Substances as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in such policies (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35) shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation if and to the extent such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify Contracting Authority, in writing, that a change in any applicable Contracting Authority policies regarding WHMIS and the transportation of Hazardous Substances (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35) either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, Contracting Authority shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, Contracting Authority shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If it does not agree, Contracting Authority shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) For greater certainty, where an immediate change to any applicable Contracting Authority policies regarding WHMIS and the transportation of Hazardous Substances is required in the interest of health or well-being of persons, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

29. MONITORING

29.1 Monitoring of Performance

- (a) Project Co shall monitor the performance of the Project Co Services in the manner and at the frequencies set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations, as set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism,

Project Co shall, as reasonably requested by Contracting Authority, provide the Contracting Authority Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.

- (b) Contracting Authority may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

29.2 Failure Points

- (a) In each Payment Period, Project Co shall measure the performance of the Project Co Services, and based on the performance of the Project Co Services in the applicable Payment Period, Failure Points may be awarded in respect of a Project Co Service in accordance with the Payment Mechanism.

29.3 Warning Notices

- (a) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues more than:
 - (i) [REDACTED] Failure Points in respect of Availability Failures;
 - (ii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Plant Services;
 - (iii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
 - (iv) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FM Help Desk;
 - (v) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services and Management of Hazardous Substances, Waste and Recycling Services; or
 - (vi) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Pedestrian Circulation Routes & Parking Areas Maintenance Services, Roads & Grounds Maintenance Services and Pest Control Services,

in any 1 Payment Period then Contracting Authority may give notice (a "Warning Notice") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice".

29.4 Monitoring Notices

- (a) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues more than:
 - (i) [REDACTED] Failure Points in respect of Availability Failures;

- (ii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Plant Services;
- (iii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
- (iv) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FM Help Desk;
- (v) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services and Management of Hazardous Substances, Waste and Recycling Services; or
- (vi) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Pedestrian Circulation Routes & Parking Areas Maintenance Services, Roads & Grounds Maintenance Services and Pest Control Services,

in any rolling 3 Payment Periods, Contracting Authority may, by notice (a “**Monitoring Notice**”) to Project Co require Project Co to increase the level of Project Co’s monitoring of its own performance of its obligations under this Project Agreement in respect of the relevant Project Co Service until such time as Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Project Co Service.

- (b) Contracting Authority may give a Warning Notice pursuant to Section 29.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
 - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
 - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that Contracting Authority was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify Contracting Authority in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co’s performance of its obligations under this Project Agreement;
 - (iii) if Project Co gives Contracting Authority a notice under Section 29.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of Contracting Authority’s receipt of such notice, may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co’s monitoring as provided herein, Contracting Authority may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 29.4(c)(iii);

- (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse Contracting Authority for any reasonable costs and expenses incurred by or on behalf of Contracting Authority in relation to the giving of such Monitoring Notice; and
- (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was not entitled to give the applicable Monitoring Notice, Contracting Authority shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Project Co Service, Project Co may apply for the withdrawal of such Monitoring Notice. If Contracting Authority is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was not entitled to give any Monitoring Notice, Contracting Authority shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

30. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

30.1 Exercise of Remedial Rights

- (a) Contracting Authority may exercise all rights set out in this Section 30 at any time and from time to time if:
 - (i) Contracting Authority, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
 - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person at or in any part of or the whole of the Site, the Existing Facilities and/or the Facility, including any Province Person, Inmate, Visitor or other person;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Project Operations;
 - (C) does or can reasonably be expected to materially prejudice Contracting Authority's ability to carry out the Correctional Complex Activities; or

- (D) may potentially compromise the reputation or integrity of Contracting Authority or any Province Person or the nature of the Province's correctional system, so as to affect public confidence in that system,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 30.1(a)(i)(A), 30.1(a)(i)(B) or 30.1(a)(i)(C), Contracting Authority shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 30.1(a)(i)(A), 30.1(a)(i)(B) or 30.1(a)(i)(C) actually occur; and
- (F) in respect of Section 30.1(a)(i)(D), Contracting Authority shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co accrues, in any Contract Month, more than:
- (A) [REDACTED] Failure Points in respect of Availability Failures;
- (B) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Plant Services;
- (C) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
- (D) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FM Help Desk;
- (E) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services and Management of Hazardous Substances, Waste and Recycling Services; or
- (F) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Pedestrian Circulation Routes & Parking Areas Maintenance Services, Roads & Grounds Maintenance Services and Pest Control Services;

- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Project Co Service;
- (iv) if, pursuant to Section 26.8, a Performance Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Work as provided pursuant to Section 26.8(e)(i);
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations or the Correctional Complex Activities;
- (vi) Contracting Authority has received a notice under either the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement that entitles Contracting Authority to exercise step-in rights thereunder;
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of Contracting Authority (or any designate appointed pursuant to Section 60.1);
- (viii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification or ISO 45001 Accreditation, as the case may be, in accordance with Section 9.9, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 13.1(i), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 13.1(l); or
- (ix) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 9.10 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 9.10.

30.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, Contracting Authority may exercise all of the rights set out in this Section 30 at any time and from time to time if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

30.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 30.1 or 30.2, Contracting Authority may, by written notice, require Project Co to take such steps as Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of each Subcontractor or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with Contracting Authority's requirements as soon as reasonably practicable.

- (b) If Contracting Authority gives notice to Project Co pursuant to Section 30.3(a) and either:
- (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event Contracting Authority is entitled to exercise step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as Contracting Authority, acting reasonably, shall think fit,

then Contracting Authority may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement and requiring the termination and replacement of each Subcontractor, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant part of the Project Operations to the standards required by this Project Agreement, and the provisions of Section 39, including Section 39.1(a)(v) and Section 39.2, shall apply in respect of the Project Co Services.

- (c) Notwithstanding the foregoing provisions of this Section 30.3, in the event of an Emergency, the notice under Section 30.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Contracting Authority may, prior to Project Co's confirmation under Section 30.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where Contracting Authority considers it to be necessary to do so, the steps which Contracting Authority may take pursuant to this Section 30.3 subsequent to the provision of the notice under Section 30.3(a) unless the notice is given at a later time as provided in Section 30.3(c), may, at Contracting Authority's option, include the partial or total suspension of Project Co's right and obligation to deliver any part of the Project Operations having regard to the circumstances in question (without any extension of the Project Term or suspension of any other part of the Project Operations), and the provisions of Section 39, including Section 39.1(a)(v) and Section 39.2, shall apply in respect of the Project Operations, but such suspension shall be only for so long as, as applicable:
- (i) the circumstances referred to in Section 30.1 or 30.2 subsist; or
 - (ii) in respect of any such circumstances relating to Project Co's performance of the Project Operations, until such time as Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of each Subcontractor, as are required pursuant to this Section 30.3 and as are necessary to be capable of performing its obligations in respect of the relevant part of the Project Operations to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

30.4 Costs and Expenses

- (a) Subject to Contracting Authority's obligations pursuant to Sections 30.5 and 30.6:
- (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 30; and
 - (ii) Project Co shall reimburse Contracting Authority for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 30.

30.5 Reimbursement Events

- (a) In this Section 30.5, a "**Reimbursement Event**" means:
- (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a Province Person;
 - (ii) a labour dispute involving employees of any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations or the Correctional Complex Activities; or
 - (iii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.
- (b) If Contracting Authority either takes steps itself or requires Project Co to take steps in accordance with this Section 30 as a result of a Reimbursement Event:
- (i) Contracting Authority shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 30 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) subject to Section 30.5(c), Contracting Authority shall bear all costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 30.
- (c) If, in exercising its rights pursuant to this Section 30, Contracting Authority performs any part of the Project Co Services either itself or by engaging others, Contracting Authority shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services. If Contracting Authority makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 30 up to the amount that is equal to that deduction.

30.6 Reimbursement if Improper Exercise of Rights

- (a) If Contracting Authority exercises its rights pursuant to this Section 30, but Contracting Authority was not entitled to do so, Contracting Authority shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been

incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Contracting Authority issued as a result of Contracting Authority having exercised such rights.

- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Contracting Authority is entitled to exercise its rights pursuant to this Section 30 before taking any such action that Contracting Authority may require and Project Co shall comply with all of Contracting Authority's requirements. Only concurrently with or after complying with Contracting Authority's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

31. PAYMENT

31.1 Payments During the Construction Period

- (a) Contracting Authority shall pay to Project Co the Construction Period Payments, plus, for clarity, applicable HST in accordance with Schedule 19 – Construction Period Payments and the other applicable provisions of this Project Agreement.
- (b) Contracting Authority shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST on the Payment Commencement Date, in accordance with Schedule 19 – Construction Period Payments and this Project Agreement.
- (c) Contracting Authority and Project Co each acknowledge that the purpose of the Construction Period Payments and the Substantial Completion Payment is to assist Project Co with costs of construction incurred by Project Co in respect of the Facility.

31.2 Monthly Service Payments and Energy Cost Reimbursement Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 31.2 and Schedule 20 – Payment Mechanism, Contracting Authority shall pay to Project Co the all-inclusive Monthly Service Payments for the performance of all of the Project Operations.
- (b) Subject to and in accordance with this Project Agreement, Contracting Authority shall reimburse Project Co for each payment made by Project Co to a Utility Company for the supply of Energy to the Facility pursuant to and in accordance with Section 3.1 of Schedule 36 – Energy Matters following the Payment Commencement Date (each is an “**Energy Cost Reimbursement Payment**”). Project Co shall not be entitled to any Energy Cost Reimbursement Payment for any period prior to the Payment Commencement Date.

31.3 Payment Adjustments

- (a) Project Co acknowledges and agrees that:
 - (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 20 – Payment Mechanism; and
 - (ii) such adjustments are integral to the provisions of this Project Agreement.

- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 20 – Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the Province to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits Contracting Authority to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

31.4 Payment Commencement

- (a) Subject to and in accordance with this Project Agreement, Contracting Authority shall pay Project Co the Monthly Service Payments calculated as being due to Project Co in respect of each Payment Period following the Payment Commencement Date in accordance with Schedule 20 – Payment Mechanism.
- (b) Project Co shall not be entitled to any Monthly Service Payments for any period prior to the Payment Commencement Date.

31.5 Adjustments to Payment Periods

- (a) The Annual Service Payment payable in respect of each of the first Contract Year and the last Contract Year shall be adjusted in accordance with Schedule 20 – Payment Mechanism.

31.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to Contracting Authority an invoice for:
 - (i) the amount of the Monthly Service Payment, owing by Contracting Authority to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period; and
 - (ii) the amount of any Energy Cost Reimbursement Payment owing by Contracting Authority to Project Co for such Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 20 – Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as Contracting Authority may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
 - (i) the Monthly Service Payment and any Energy Cost Reimbursement Payment, payable in respect of the applicable Payment Period;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 – Dispute Resolution Procedure;

- (iv) any amount owing to Contracting Authority under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement; and
 - (vi) the net amount owing by Contracting Authority to Project Co, or by Project Co to Contracting Authority, as applicable.
- (d) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (e) Each monthly invoice delivered during the period from the Substantial Completion Date until 45 days following the Final Completion Date shall include up-to-date copies of the parcel registers for the Lands.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The Contracting Authority Representative shall review each invoice submitted in accordance with this Section 31.6, and, within 5 Business Days of receiving such invoice, Contracting Authority shall pay the amount stated in such invoice. Any such payment shall be subject to adjustment pursuant to Section 31.6(k).
- (h) Contracting Authority shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, Contracting Authority shall not be obligated to pay a Monthly Service Payment described in an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Performance Monitoring Report and the Payment Adjustment Report referred to in Section 31.6(i) for the previous Payment Period. In the event that Project Co delivers any Performance Monitoring Report or Payment Adjustment Report later than the stipulated date in Section 31.6(i), Contracting Authority's obligation to pay the Monthly Service Payment described in the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Performance Monitoring Report or Payment Adjustment Report to Contracting Authority.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall submit to Contracting Authority:
- (i) a Performance Monitoring Report in respect of the Payment Period just ended, which, without limiting any provision of this Project Agreement, shall be the primary source of the factual information regarding the performance of the Project Co Services during such Payment Period used to calculate the relevant Monthly Service Payment and the number of Failure Points awarded to Project Co pursuant to Schedule 20 – Payment Mechanism;
 - (ii) a report (a "**Payment Adjustment Report**") setting out any adjustments required between the actual Monthly Service Payment determined by Project Co to be owing by Contracting Authority to Project Co in respect of the Payment Period just ended and the amount that was paid by Contracting Authority during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;

- (B) all Deductions in relation to Quality Failures;
 - (C) all Deductions in relation to Service Failures;
 - (D) all Deductions in relation to Energy Failures; and
 - (E) any Gainshare Adjustment or Painshare Adjustment; and
- (iii) a Monthly Energy Report.
- (j) No later than 365 days prior to the Scheduled Substantial Completion Date, the Parties shall, acting reasonably, agree to the form of Performance Monitoring Report and the form of Payment Adjustment Report to be used during the Operational Term, which forms, for greater certainty, shall, at a minimum, reflect and satisfy all of the applicable requirements of this Project Agreement. If the Parties fail to agree to such forms by such date, then either Party may at any time refer such matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Upon agreement of the Parties, acting reasonably, the form of Performance Monitoring Report and the form of Payment Adjustment Report may be changed from time to time.
- (k) Contracting Authority shall review each Performance Monitoring Report, Payment Adjustment Report and Monthly Energy Report submitted by Project Co pursuant to Section 31.6(i) within 15 Business Days of Contracting Authority’s receipt of such Performance Monitoring Report, Performance Adjustment Report or Monthly Energy Report, as applicable, provided that no review by Contracting Authority of a Performance Monitoring Report, a Payment Adjustment Report or a Monthly Energy Report shall constitute acceptance or approval by Contracting Authority of such Performance Monitoring Report, Payment Adjustment Report or Monthly Energy Report. Subject to Section 31.9 and Part E of Schedule 20 – Payment Mechanism, the adjustments set out in a Payment Adjustment Report shall be reflected by Project Co in the Monthly Service Payment invoice next issued by Project Co.
- (l) Project Co shall (i) include with each Performance Monitoring Report, Payment Adjustment Report and Monthly Energy Report submitted by Project Co pursuant to Section 31.6(i) such supporting documentation as is reasonably required to substantiate and confirm the contents of such Performance Monitoring Report, Payment Adjustment Report (including the adjustments set out in each Payment Adjustment Report) or Monthly Energy Report; and (ii), upon the request of Contracting Authority from time to time, provide to Contracting Authority additional supporting documentation that Contracting Authority believes is reasonably necessary to substantiate and confirm the contents of a Performance Monitoring Report, Payment Adjustment Report or Monthly Energy Report.
- (m) In respect of all invoices issued by Project Co for payment from and after the Payment Commencement Date through to the Payment Period ending no less than 45 days following the date of the Final Completion Certificate, Project Co shall cause its solicitors to:
- (i) subsearch title to the Lands as at noon of the day that each payment is due; and
 - (ii) promptly send to Contracting Authority
 - (A) a Notice;

- (B) a statutory declaration from an officer of Project Co and, upon request by Contracting Authority, from any Project Co Party, with respect to Construction Act compliance and payment to all lien claimants; and
 - (C) up-to-date copies of the parcel registers for all parts of the Lands with respect to the subsearches of title described in Section 31.6(m)(i).
- (n) Project Co acknowledges that the provisions of Section 15.3 shall apply in respect to Construction Act compliance.

31.7 Electronic Invoicing

- (a) Project Co shall cooperate with the reasonable requirements of Contracting Authority's finance department, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with Contracting Authority's information systems.

31.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, Contracting Authority shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. Contracting Authority may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by Contracting Authority of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the Contracting Authority Representative shall either:
 - (i) review the Payment Adjustment Report and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount Contracting Authority previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Contracting Authority or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if Contracting Authority disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice Contracting Authority is reasonably able to quantify it) which Contracting Authority disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Contracting Authority Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount Contracting Authority previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Contracting Authority or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that Contracting Authority shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.

31.9 Performance Monitoring Report, Payment Adjustment Report and Monthly Energy Report Disputes

- (a) In the event that Contracting Authority, acting in good faith, disputes all or any part of a Performance Monitoring Report or a Monthly Energy Report, then, unless the Parties otherwise agree, Project Co and Contracting Authority shall use commercially reasonable efforts to agree to the necessary amendments to such Performance Monitoring Report or Monthly Energy Report as soon as possible, provided that either Party may at any time refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) In the event that Contracting Authority, acting in good faith, disputes all or any part of a Payment Adjustment Report or the Monthly Service Payment payable thereunder, Contracting Authority shall (i) notify Project Co in writing of that part of the amounts (insofar as at the time of such notice Contracting Authority is reasonably able to quantify it) which Contracting Authority disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim; and (ii) withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount. Unless the Parties otherwise agree, the Parties shall use commercially reasonable efforts to resolve the dispute in question as soon as possible, provided that either Party may at any time refer such dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Following resolution of the dispute, any amount which has been paid by Contracting Authority that is determined not to have been payable shall be paid forthwith by Project Co to Contracting Authority and Project Co shall indemnify and save harmless Contracting Authority from and against any damages suffered or incurred resulting from such overpayment by Contracting Authority as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by Contracting Authority. Following resolution of the dispute, any amount that has been set off by Contracting Authority that is determined to have been payable shall be paid forthwith by Contracting Authority to Project Co and Contracting Authority shall indemnify and save harmless Project Co from and against any damages suffered or incurred resulting from such set off by Contracting Authority as provided for at Section 53.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

31.10 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Project Co shall maintain, or cause to be maintained, all holdbacks required pursuant to the Construction Act and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

31.11 Manner of Payment

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.

- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.
- (c) For the purposes of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the details of the transfer.

31.12 Intentionally Deleted**31.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) Contracting Authority to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Construction Period Payment and Unpaid Construction Period Payments), any amounts (including, without limitation, any amounts payable in accordance with Section 53) that (A) are due to Contracting Authority by Project Co pursuant to the terms of this Project Agreement or (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Project Co to set off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 53) that (A) are due to Project Co by Contracting Authority pursuant to the terms of this Project Agreement or (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.

31.14 Effect of Payment

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

31.15 Audit of Performance of Project Operations

- (a) Without limiting Contracting Authority's rights and Project Co's obligations pursuant to Section 34.2 and subject to Part E of Schedule 20 – Payment Mechanism, at any time and from time to time until 180 days after the Termination Date, Contracting Authority may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to Contracting Authority within the 7 year period prior to the date of such notice, including any Performance Monitoring Reports, Payment Adjustment Reports, Monthly Energy Reports, Energy Analysis Reports and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.
- (b) Contracting Authority shall appoint an auditor to perform and complete such audit at Contracting Authority's cost and expense and pursuant to terms of reference determined by Contracting Authority.
- (c) Within a reasonable time following receipt of a notice referred to in Section 31.15(a), Project Co shall make available to Contracting Authority's auditor, any Performance Monitoring Reports,

Payment Adjustment Reports, Monthly Energy Reports, Energy Analysis Reports and any other records, reports, information, documents or data relating to performance and payments.

- (d) Contracting Authority shall notify Project Co of the results of the audit, and if Contracting Authority's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 – Dispute Resolution Procedure:
- (i) Project Co shall:
- (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Performance Monitoring Report, Payment Adjustment Report, Monthly Energy Report, Energy Analysis Report or other record, report, information, document or data; and
- (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by Contracting Authority, reimburse Contracting Authority for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
- (I) the actual costs relating to the auditor and audit; or
- (II) an amount equal to the amount of any overpayment;
- (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by Contracting Authority, Project Co shall reimburse Contracting Authority for the amount of such overpayment, and, further, shall indemnify Contracting Authority from and against any damages suffered or incurred resulting from such overpayment by Contracting Authority as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by Contracting Authority; and
- (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by Contracting Authority, Contracting Authority shall pay Project Co the amount of such underpayment and, further, shall indemnify Project Co from and against any damages suffered or incurred resulting from such underpayment by Contracting Authority as provided for at Section 53.2(c) on the basis that the due date was the date of the underpayment by Contracting Authority.

31.16 No Other Entitlement

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

32. TAXES

32.1 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, Contracting Authority shall not be required to pay any interest

and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.

- (b) Contracting Authority shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site, the Facility and/or the Existing Facilities.
- (c) Contracting Authority shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Contracting Authority upon and in connection with payments by Contracting Authority to Project Co under this Project Agreement. For greater certainty, the Parties agree that the conditions set out in paragraph 168(3)(c) of the *Excise Tax Act* (Canada) are not satisfied at the time of Substantial Completion hereunder and, unless otherwise required by Applicable Law, any HST payable by Contracting Authority hereunder shall be calculated solely by reference to the amount of the payment, without any deductions or adjustments on account of paragraph 168(3)(c) of the *Excise Tax Act* (Canada).

32.2 Changes in Scope of Taxation

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Project Co in connection with the performance of the Works, Contracting Authority and Project Co agree to co-operate to determine how such change affects their respective obligations under this Project Agreement.

32.3 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 32.3, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 32.3, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

32.4 Information and Assistance Provided by Project Co

- (a) Project Co shall, at Contracting Authority's request and cost, assist Contracting Authority in applying for and obtaining all remissions and credits of Taxes to which Contracting Authority is entitled.
- (b) Contracting Authority may apply for a global or general exemption, waiver, remission or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at Contracting Authority's cost, assist Contracting Authority in making any applications for such global or general exemption, waiver, remission or refund and shall provide Contracting Authority with such documentation as Contracting Authority may reasonably require to support such application and, in any event, shall provide such consent as Contracting Authority may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by Contracting Authority through such application shall accrue to the sole benefit of Contracting Authority.
- (c) Project Co will provide Contracting Authority with any information reasonably requested by Contracting Authority from time to time in relation to any Taxes chargeable by Project Co in accordance with this Project Agreement and payable by Contracting Authority to Project Co from time to time.

32.5 Residency – *Income Tax Act (Canada)*

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without Contracting Authority's prior written consent, which consent may be withheld in Contracting Authority's sole discretion.

32.6 Taxes – General

- (a) Project Co shall not, without the prior written consent of Contracting Authority (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause Contracting Authority or any Contracting Authority Party to have (or result in Contracting Authority or any Contracting Authority Party having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

32.7 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) Contracting Authority or any Contracting Authority Party is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority or any Contracting Authority Party under this Project Agreement or under any of the Project Documents, then Contracting Authority or any Contracting Authority Party shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) Contracting Authority or any Contracting Authority Party is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be

deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by Contracting Authority or any Contracting Authority Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) Contracting Authority or any Contracting Authority Party is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority or any Contracting Authority Party under this Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless Contracting Authority or any Contracting Authority Party for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Contracting Authority or any Contracting Authority Party in respect of any amounts paid or credited by Contracting Authority or any Contracting Authority Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by Contracting Authority or any Contracting Authority Party (as applicable) in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date Contracting Authority makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by Contracting Authority shall be conclusive evidence, absent manifest error, of the amount due from Project Co to Contracting Authority. Contracting Authority shall be entitled to exercise its rights of set-off under Section 31.13 against any amounts owing under this indemnification.

33. FINANCIAL MODEL

33.1 Appointment of Custodian

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced person to act as the Custodian for the purposes of this Project Agreement, and shall enter into the Custody Agreement.

33.2 Delivery and Use of Financial Model

- (a) Project Co shall deliver copies of the Financial Model to (i) Contracting Authority in accordance with Schedule 2 – Completion Documents, and (ii) the Custodian in accordance with the Custody Agreement, which shall be held by the Custodian on the terms and conditions set out in the Custody Agreement.
- (b) Following the approval by Contracting Authority of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to Contracting Authority and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.

- (d) Project Co hereby grants to Contracting Authority an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that Contracting Authority shall not be liable to Project Co for, and Project Co shall not seek to recover from Contracting Authority, any Contracting Authority Party or any other Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

34. RECORDS, INFORMATION AND AUDIT

34.1 Records Provisions

- (a) Project Co shall comply with Schedule 26 – Record Provisions.

34.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Subcontractor to provide to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor and the Service Provider shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, including the Construction Contractor and the Service Provider, to provide to Contracting Authority (at Contracting Authority's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 34.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Site and the Facility, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide Contracting Authority with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Co Party from any Governmental Authority in relation to any of the Project Operations, the Correctional Complex Activities, the Site or the Facility, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of

Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.

- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co’s normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Works or Project Co Services wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority monitoring and auditing such parts of the Works or Project Co Services, including providing them with access and copies (at Contracting Authority’s reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works or Project Co Services. Except as otherwise provided herein, all of Contracting Authority’s costs for the inspections, audits and monitoring shall be borne by Contracting Authority.
- (f) In conducting an audit of Project Co under Section 34.2(e) or as otherwise provided under this Project Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Contracting Authority’s reasonable cost) of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the reasonable request of Contracting Authority’s auditors, Project Co shall provide such information, reports, documents and records as Contracting Authority’s auditors may reasonably require, other than Sensitive Information.
- (g) Contracting Authority’s rights pursuant to this Section 34.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) Contracting Authority’s rights pursuant to this Section 34.2 shall not limit or restrict any Governmental Authority’s right of review, audit, information or inspection under Applicable Law.
- (i) Contracting Authority’s right pursuant to this Section 34.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in Right of Canada and the Auditor General of Canada without the requirement for further action on the part of Contracting Authority.

34.3 Delivery of Reports to Contracting Authority

- (a) During the Operational Term, in addition to Project Co’s obligations pursuant to this Section 34, Project Co shall provide Contracting Authority with a copy of all reports required pursuant to this Project Agreement including, but not limited to, the Performance Monitoring Report, the Payment Adjustment Report, the Monthly Energy Report, the Annual Insurance Report and any other reports which are required to be delivered to Contracting Authority pursuant to this Project Agreement and which are requested by Contracting Authority.

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35. CHANGES IN LAW**35.1 Performance after Change in Law**

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

35.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
 - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

35.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the

Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 35.3.

- (b) On the occurrence of a Relevant Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and

- (F) any entitlement to compensation payable shall be in accordance with this Section 35.3, and any calculation of compensation shall take into consideration, inter alia:
- (I) any failure by a Party to comply with Section 35.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 37 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 35.3, and Section 38 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 35.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[REDACTED] (index linked) in that Contract Year, neither Contracting Authority nor Project Co shall be entitled to any payment or compensation pursuant to this Section 35.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 37 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

35.4 Pandemic and Epidemic Change in Law

- (a) Subject to Section 35.4(d) on the occurrence of a Pandemic and Epidemic Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations (“**Pandemic and Epidemic Change in Law Compensation**”). Any such compensation shall be calculated in accordance with this Section 35.4.
- (b) On the occurrence of a Pandemic and Epidemic Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Pandemic and Epidemic Change in Law;
 - (ii) the Parties shall meet within ten Business Days of such notice (or such longer period of time agreed to between the Parties, acting reasonably) to consult with respect to the effect

of the Pandemic and Epidemic Change in Law and to reach an agreement on whether a Variation is required as a result of such Pandemic and Epidemic Change in Law, and, if the Parties have not, within ten Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of this meeting, reached an agreement, either Party may refer the question of whether a Pandemic and Epidemic Change in Law has occurred or the effect of any Pandemic and Epidemic Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and

- (iii) Contracting Authority shall, within ten Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
- (A) no profit shall be payable to Project Co, the Construction Contractor, the Service Provider or any Subcontractor as Pandemic and Epidemic Change in Law Compensation and accordingly:
 - (I) any Pandemic and Epidemic Change in Law Compensation shall include Overhead calculated in accordance with Appendix C to Schedule 22 - Variation Procedure; and
 - (II) Overhead and Profit pursuant to Appendix B to Schedule 22 - Variation Procedure shall not apply;
 - (B) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Pandemic and Epidemic Change in Law;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) without limiting any requirement of this Project Agreement, including Schedule 22 - Variation Procedure, Project Co shall provide Contracting Authority with any evidence and proper documentation Contracting Authority may reasonably require in order to assess the reasonableness of the Pandemic and Epidemic Change in Law Compensation. The Parties agree that evidence and proper documentation shall include:
 - (I) proof of the Pandemic and Epidemic Change in Law;
 - (II) any proposed changes to the critical path of the Works or to the scheduling of the Project Co Services;
 - (III) detailed information quantifying the change in costs incurred or to be incurred by Project Co and its Subcontractors in performing the Project Operations related to the Pandemic and Epidemic Change in Law, including information on the financial impact of the Pandemic and Epidemic Change in Law on Project Co and its Subcontractors, invoices, proof of payments, and information setting out overhead, labour rates, unit rates, and other prices and quantities for materials, products, supplies,

equipment, services, facilities and transportation and any other Direct Cost described in Appendix A of Schedule 22 - Variation Procedure; and

- (IV) information confirming any amounts described in Section 35.4(b)(iii)(G)(III) received or that will or are likely to be received by Project Co and its Subcontractors.
- (E) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Pandemic and Epidemic Change in Law as soon as reasonably practicable;
- (F) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Pandemic and Epidemic Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Pandemic and Epidemic Change in Law;
- (G) any entitlement to Pandemic and Epidemic Change in Law Compensation payable shall be in accordance with this Section 35.4, and any calculation of such compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 35.4(b)(iii)(D) or Section 35.4(b)(iii)(F);
 - (II) any increase or decrease in its costs resulting from such Pandemic and Epidemic Change in Law; and
 - (III) any amount which Project Co or a Subcontractor:
 - (i) recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement), which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy; or
 - (ii) receives as financial relief or support from a Governmental Authority; and
- (H) with respect to a Pandemic and Epidemic Change in Law during the Operational Term, Project Co shall not receive any compensation for any Deductions applied

under Schedule 20 – Payment Mechanism for failing to meet any applicable performance standards.

- (c) Project Co shall not be entitled to any payment or compensation or, except as expressly provided in Section 37 or otherwise in this Project Agreement, relief in respect of any Pandemic and Epidemic Change in Law, or the consequences thereof, other than in accordance with this Section 35.4, and Section 38 shall be construed accordingly.
- (d) Project Co shall not be entitled to any relief under this Section 35.4 for a Pandemic and Epidemic Supply Chain Delay that may result from a Pandemic and Epidemic Change in Law. Any relief or compensation for Project Co for any Pandemic and Epidemic Supply Chain Delay shall be addressed under Section 40 of this Project Agreement.

36. VARIATIONS

36.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Contracting Authority to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
- (c) Without limiting Project Co’s obligations pursuant to Section 9.3 and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of Project Co Services.

36.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Contracting Authority at all times desires to reduce the Monthly Service Payments and the overall cost to Contracting Authority of the Facility and the Project Co Services, and Project Co agrees to cooperate, explore and work with Contracting Authority in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “Innovation Proposal”) by notice to Contracting Authority.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by Contracting Authority;
 - (ii) any Variation resulting from a Change in Law; or

- (iii) any change to the Correctional Complex Activities.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable Contracting Authority to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
 - (iii) request Contracting Authority to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Contracting Authority requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and Contracting Authority;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by Contracting Authority must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by Contracting Authority to fully evaluate and consider the Innovation Proposal.
- (e) Contracting Authority shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
 - (i) a change in the Monthly Service Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Facility, the Existing Facilities or the Project Co Services, or the likelihood of successful completion of the Works or delivery of the Project Co Services;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility, or the performance of the Correctional Complex Activities;
 - (iv) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
 - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Project Co Services, as applicable;
 - (vi) the residual value of the Facility is affected;
 - (vii) the Innovation Proposal will change the Lifecycle Payment;

- (viii) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or
- (ix) any other matter Contracting Authority considers relevant.
- (f) Contracting Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Contracting Authority may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If Contracting Authority accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless Contracting Authority specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 36.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of each Subcontractor to decrease, the net savings in the costs of Project Co and/or each Subcontractor will be shared equally by Project Co and Contracting Authority, and Contracting Authority's share of the net savings shall, if the Parties agree, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of Contracting Authority to decrease, the net savings in the costs of Contracting Authority will be shared as follows:
 - (i) equally by Project Co and Contracting Authority for the first 5 years following the implementation of the Innovation Proposal; and
 - (ii) thereafter, Contracting Authority shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall, at Contracting Authority's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

37. DELAY EVENTS

37.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it affects the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
 - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;

- (ii) any breach by Contracting Authority of any of Contracting Authority's obligations under this Project Agreement (including any delay by Contracting Authority in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, any delay by Contracting Authority in carrying out its obligations set forth in Section 21.3 or any delay by Contracting Authority in carrying out its obligations set forth in Schedule 10 - Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
- (iii) an opening up of the Works pursuant to Section 19.5 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;
- (iv) any Contracting Authority Contamination pursuant to Section 16.2(d);
- (v) any Contracting Authority Items of Interest or Value pursuant to Section 16.3(e);
- (vi) any Contracting Authority Species-at-Risk pursuant to Section 16.4(d);
- (vii) any Contracting Authority Other Site Condition pursuant to Section 16.5(d);
- (viii) subject to compliance by Project Co with the provisions of Section 9.6, the execution of Additional Works on the Site by Additional Contractors;
- (ix) a requirement pursuant to Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the written instruction of Contracting Authority during the pendency of a Dispute, to the extent that the Dispute is subsequently determined in Project Co's favour;
- (x) an event of Force Majeure;
- (xi) a Relief Event;
- (xii) a Relevant Change in Law;
- (xiii) a Pandemic and Epidemic Change in Law; or
- (xiv) subject to and in accordance with Section 9.4A, an Issuing Authority's failure to issue to Project Co a Listed Project Co PLAA on or before the applicable Listed Project Co PLAA Deadline.

37.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the Contracting Authority Representative, the CDB and the Independent Certifier within five Business Days of becoming aware of the occurrence of any event or circumstances described in Section 37.1(a)(ii), (iv), (v), (vi), (vii), (viii) or (xiv) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 37.2(f) as a Delay Event.

- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 37.2(a), provide further written details to the Contracting Authority Representative, the CDB and the Independent Certifier which shall include:
- (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 37.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 37.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date or the Scheduled Final Completion Date if such an event or circumstances forms the basis for a future claim by Project Co for relief as a Delay Event; and
 - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) If Project Co does not provide further written details to the Contracting Authority Representative, the CDB and the Independent Certifier as required under Section 37.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and the Contracting Authority Representative shall not be obligated to consider, the notice given under Section 37.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 37. Project Co, at its option, may submit a new, currently dated notice which complies with the provisions of Section 37.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated notice, and the provisions of this Section 37 shall apply to any new notice, mutatis mutandis. Project Co acknowledges and agrees that the Contracting Authority Representative, in determining Project Co's entitlement to an extension of time pursuant to this Section 37, without limiting any other right of the Contracting Authority Representative under this Project Agreement, shall be entitled to take into account the delay between:
- (i) Project Co becoming aware of the occurrence of the event or circumstance forming the basis of the original notice delivered pursuant to Section 37.2(a); and
 - (ii) Project Co submitting the new notice pursuant to Section 37.2(a) in respect of that event or occurrence.
- (d) As soon as possible but in any event within three Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 37.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Certifier.

- (e) The Contracting Authority Representative shall, after receipt of written details under Section 37.2(b), or of further particulars under Section 37.2(d), be entitled by written notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (f) In addition to complying with its obligations under Sections 37.2(a) and 37.2(b), Project Co shall provide written notice to the Contracting Authority Representative, the CDB and the Independent Certifier within five Business Days of becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of Delay Event. Project Co shall, within ten Business Days after such notification, provide further written details of the Delay Event to the Contracting Authority Representative, the CDB and the Independent Certifier including, if and as applicable, to supplement the information given in Sections 37.2(a), 37.2(b), 37.2(d) and 37.2(e), to substantiate or support Project Co's claim which details shall include to the extent not previously provided:
- (i) a statement of which Delay Event upon which the claim is based;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date or Scheduled Final Completion Date, including a critical path analysis of the event or circumstances indicating the impact upon the Scheduled Substantial Completion Date, if such event or circumstances were to become a Delay Event; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (g) As soon as possible but in any event within three Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 37.2(f), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Certifier.
- (h) The Contracting Authority Representative shall, after receipt of written details under Section 37.2(f), or of further particulars under Section 37.2(g), be entitled by written notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall afford the Contracting Authority Representative, the CDB and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (i) Subject to the provisions of this Section 37, the Contracting Authority Representative shall allow Project Co an extension of time equal to the critical path delay to the Scheduled Substantial Completion Date or Scheduled Final Completion Date caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as

applicable, as soon as reasonably practicable and in any event within ten Business Days of the later of:

- (i) the date of receipt by the Contracting Authority Representative of Project Co's notice given in accordance with Section 37.2(f) and the date of receipt of adequate further particulars (if such are required under Section 37.2(g)), whichever is later; and
 - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co or requested by Contracting Authority in accordance with Section 37.2(g) and the date of receipt of any further particulars (if such are required under Section 37.2(h)), whichever is later.
- (j) For greater certainty:
- (i) no Delay Event shall extend the Project Term; and
 - (ii) each Delay Event shall delay the commencement of the Operational Term and reduce the length of the Operational Term as a result of the delay in the achievement of Substantial Completion.
- (k) If:
- (i) the Contracting Authority Representative declines to fix a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as applicable;
 - (ii) Project Co considers that a different Scheduled Substantial Completion Date or Scheduled Final Completion Date should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,
- then Project Co shall be entitled to refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (l) To the extent that Project Co does not comply with its obligations under Sections 37.2(a) – (h), inclusive, and subject to Section 37.2(c), such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 37.
- (m) Where there are concurrent delays, some of which are caused by Contracting Authority or others for whom Contracting Authority is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to an extension in the Scheduled Substantial Completion Date, or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Substantial Completion Date where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (n) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.

37.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 37.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 37.

38. COMPENSATION EVENTS**38.1 Definition**

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 37.1(a)(ii), 37.1(a)(iii), 37.1(a)(iv), 37.1(a)(v), 37.1(a)(vi), 37.1(a)(vii), 37.1(a)(viii), 37.1(a)(ix), or 37.1(a)(xiv), and as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

38.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 38. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 37.1(a)(i);
 - (ii) Section 41, in the case of a Delay Event referred to in Section 37.1(a)(x);
 - (iii) Section 40, in the case of a Delay Event referred to in Section 37.1(a)(xi);
 - (iv) Section 35.3, in the case of a Delay Event referred to in Section 37.1(a)(xii); and
 - (v) Section 35.4 in the case of a Delay Event referred to in Section 37.1(a)(xiii).
- (b) Subject to Sections 38.2(c), 38.2(d), 38.3, 38.4 and 38.5, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Contracting

Authority to Project Co. Project Co shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.

- (c) If Contracting Authority is required to compensate Project Co pursuant to this Section 38.2, then Contracting Authority may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, Contracting Authority may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 – Variation Procedure shall apply.
- (d) To the extent that Project Co does not comply with its obligations under Sections 37.2(a) – h, inclusive, and subject to Section 37.2(c), such failure shall be taken into account in determining Project Co’s entitlement to relief pursuant to this Section 38.

38.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 38 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining Project Co’s entitlement to relief pursuant to this Section 38.

38.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 38 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

38.5 Delivery of Works Schedule

- (a) If an event referred to in Sections 37.1(a)(iii), (iv), (v), (vi), (vii), (viii) or (xiv) occurs after the date that is 94 days following Financial Close, as such date may be extended in accordance with Section 20.2(c), and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Works Schedule referred to in Section 20.2(b)(i), Project Co shall not be entitled to receive any compensation under this Section 38 in respect of such Compensation Event unless such Compensation Event is also a Delay Event, in which case Project Co shall be entitled to compensation in an amount equal to the lesser of:
 - (i) the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and

- (ii) the compensation which, but for the application of this Section 38.5, Project Co would have been entitled to pursuant to Section 38.2(b).

39. EXCUSING CAUSES

39.1 Definition

- (a) For the purposes of this Project Agreement, “**Excusing Cause**” means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services:
 - (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Co Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by Contracting Authority of any of Contracting Authority’s obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of such Province Person and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co’s performance of the Project Co Services, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 – Output Specifications or was otherwise provided for in this Project Agreement; or
 - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co’s obligations under this Project Agreement;
 - (iv) the outbreak or the effects of any outbreak of Medical Contamination, except to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused, or contributed to, by Project Co or any Project Co Party, including any failure by Project Co or any Project Co Party to comply with procedures or instructions relating to control of infection or to take commercially reasonable steps to mitigate the effects of such Medical Contamination, provided that neither Project Co nor any Project Co Party shall be deemed to have caused, or contributed to, an outbreak of Medical Contamination if such Medical Contamination was caused, or contributed to, by an employee of Project Co or any Project Co Party who was unaware of his or her condition;

- (v) the implementation of any action taken by Contracting Authority, or any suspension of Project Co's obligation to deliver all or any part of the Project Co Services, or the compliance by Project Co with instructions given by Contracting Authority, in each case in the circumstances referred to in Section 30;
- (vi) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between Contracting Authority and Project Co;
- (vii) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person;
- (viii) any breach by Contracting Authority of its obligation to perform (or cause to be performed) the Contracting Authority FM Services in accordance with this Project Agreement to the extent that such breach has a material adverse effect on Project Co's ability to perform the Project Co Services;
- (ix) the performance of any Scheduled Maintenance in accordance with the Scheduled Maintenance Plan and any acceleration of Scheduled Maintenance pursuant to Section 26.3, provided that:
 - (A) improperly performed Scheduled Maintenance and the effects thereof shall not constitute an Excusing Cause; and
 - (B) where the Scheduled Maintenance continues beyond the period set out in the Scheduled Maintenance Plan or beyond the period required for its accelerated performance pursuant to Section 26.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 39.1(a)(ix)), Failure Points may accrue from the time the Scheduled Maintenance was due to have been completed in accordance with the Scheduled Maintenance Plan or Section 26.3, as applicable;
- (x) any Contracting Authority Contamination pursuant to Section 16.2(d);
- (xi) any Contracting Authority Items of Interest or Value pursuant to Section 16.3(e);
- (xii) any Contracting Authority Species-at-Risk pursuant to Section 16.4(d);
- (xiii) any Contracting Authority Other Site Condition pursuant to Section 16.5(d);
- (xiv) the occurrence of a Severe SolGen Security Event, except to the extent that such event is caused, or contributed to, by Project Co or any Project Co Party; or
- (xv) the exercise by Contracting Authority of its rights pursuant to and in accordance with Section 14.3 to limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site and/or the Facility for purposes related to the provision of the Correctional Complex Activities or related to security and confidentiality, where such limitation or restriction materially adversely interferes with Project Co's ability to perform the Project Operations, except to the extent that any such limitation or restriction is imposed, wholly or in part, due to an act or omission of Project Co or any Project Co Party.

39.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 39.3 and 39.4):
- (i) any failure by Project Co to perform, and any poor performance of, any affected Project Co Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Project Co Services for the duration and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected Project Co Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Project Co Services had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure, Energy Failure or Service Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Project Co Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
 - (iv) this Section 39.2 shall not limit Contracting Authority's entitlement to reimbursement pursuant to Section 30.4;
 - (v) Contracting Authority shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 39.1(a)(ii), 39.1(a)(iii), 39.1(a)(vii), 39.1(a)(viii), 39.1(a)(x), 39.1(a)(xi), 39.1(a)(xii), 39.1(a)(xiii) or 39.1(a)(xiv) including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure; and
 - (vi) the Monthly Service Payments payable by Contracting Authority shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Project Co Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure.

39.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;

- (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 39.

39.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 39 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

40. RELIEF EVENTS

40.1 Definition

- (a) For the purposes of this Project Agreement, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
 - (iii) accidental loss or damage to the Works, the Existing Facilities and/or the Facility or any roads servicing the Site;
 - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
 - (v) blockade or embargo falling short of Force Majeure;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the correctional facility, construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario;
 - (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of correctional facilities in general, but excluding any action taken by any Inmate or Inmates or any action taken by any member

or members of the SolGen Staff, which is not an official or unofficial strike, lockout, work to rule or other labour-related action described in Section 40.1(a)(vi). Notwithstanding the foregoing, a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.7; or

- (viii) the occurrence of a Pandemic and Epidemic Supply Chain Delay,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party and (ii) in the case of Contracting Authority claiming relief, as a result of any act or omission of any Province Person.

40.2 Consequences of a Relief Event

- (a) Subject to Section 40.3:

- (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 44.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
- (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, Contracting Authority shall be entitled to make Deductions in accordance with Schedule 20 – Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 40.2(a)(ii).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 37.1(a)(xi):

- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
- (ii) in respect of a Relief Event referred to in Section 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii) or 40.1(a)(viii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of the delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would not have been paid by Project Co to the Senior Lenders.

- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 40.2(b)(ii) and 46.
- (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 – Payment Mechanism will continue to be in full force and effect.
- (e) Subject to Section 46, Project Co’s sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 40.
- (f) In respect of a Relief Event that,
 - (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

Contracting Authority shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal to the Senior Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Senior Lenders, in accordance with the Lending Agreements, during the period of delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the delay caused by the Relief Event would not have been paid by Project Co to the Senior Lenders.

40.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 40.3, such failure shall preclude such Party’s entitlement to relief pursuant to this Section 40.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 40.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.

- (f) If, following the issue of any notice referred to in Section 40.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

40.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

41. FORCE MAJEURE

41.1 Definition

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
- (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the Facility and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the Facility and/or the Site from any event referred to in Section 41.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

41.2 Consequences of Force Majeure

- (a) Subject to Section 41.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 37.1(a)(x):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
 - (ii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum,

Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.

- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 41.2(b)(ii), 41.2(d) and 46.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 – Payment Mechanism will be suspended, and Contracting Authority shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Project Co Services provided to Contracting Authority, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 41.2(d) shall never be more than the Maximum Service Payment.
- (e) In respect of an event of Force Majeure that,
 - (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

Contracting Authority shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal to the Senior Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Senior Lenders, in accordance with the Lending Agreements, during the period of the delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the delay caused by the event of Force Majeure would not have been paid by Project Co to the Senior Lenders.

- (f) Subject to Section 46, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 41.

41.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 41.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 41.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 41.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 41.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

41.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of Contracting Authority and Project Co to reach agreement pursuant to this Section 41.5.

42. PROJECT CO DEFAULT

42.1 Project Co Events of Default

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
 - (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:

- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Contracting Authority, a Contracting Authority Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Correctional Complex Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 42.1(a)(i)(A);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent, garnishment or other process of or order of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
- (D) Project Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 42.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 42.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
- (iii) Project Co either:
- (A) failing to deliver a Recovery Schedule under Section 20.4(a)(iv)(A);

- (B) delivering a Recovery Schedule under Section 20.4(a)(iv)(A) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
- (C) delivering a Recovery Schedule under Section 20.4(a)(iv)(A) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Sections 20.4(a)(iv) and 20.4(a)(v);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project Operations or the Correctional Complex Activities, or that may compromise (1) the Province's reputation or integrity or the nature of the Province's correctional system, or (2) the ability of the Province to conduct its business, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from Contracting Authority;
- (v) Project Co committing a breach of Sections 49 or 50;
- (vi) Project Co committing a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 42.1(a)(i) to (iv) inclusive or 42.1(a)(vii) to (xviii) inclusive) which has or will have a material adverse effect on the performance of the Correctional Complex Activities, other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of the Correctional Complex Activities;
 - (II) put forward, within five Business Days of receipt of notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
 - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
 - (B) upon Project Co failing to comply with any of the provisions of Section 42.1(a)(vi)(A):

- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of the Correctional Complex Activities;
 - (II) Project Co shall, within three Business Days after notice from Contracting Authority, submit a plan and schedule, which Contracting Authority shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to Contracting Authority, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 42.1(a)(vi)(B), or Contracting Authority, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vii) Project Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
 - (viii) Project Co ceasing to provide any Project Co Service in accordance with this Project Agreement which are necessary for the performance of the Correctional Complex Activities, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
 - (ix) Project Co failing to comply with Sections 56.1 or 56.3;
 - (x) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 56.4;
 - (xi) Project Co being awarded a total of **[REDACTED]** or more Failure Points in any rolling 3 Payment Periods during the Operational Term;
 - (xii) Project Co being awarded a total of **[REDACTED]** or more Failure Points in any rolling 6 Payment Periods during the Operational Term;
 - (xiii) Project Co being awarded a total of **[REDACTED]** or more Failure Points in any rolling 12 Payment Periods during the Operational Term;
 - (xiv) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through Contracting Authority) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;

- (xv) Project Co failing to pay any sum or sums due to Contracting Authority under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Project Co pursuant to Section 31.13(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from Contracting Authority;
- (xvi) Project Co failing to comply with Section 57;
- (xvii) Project Co failing to comply with Section 7.3 or Schedule 28 – Refinancing;
- (xviii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within five Business Days of Project Co becoming aware of such breach;
- (xix) Project Co failing to comply with any determination, decision, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xx) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or Contracting Authority (an “**H&S Conviction**”) provided however that:
 - (A) an H&S Conviction of Project Co, a Project Co Party or Contracting Authority shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 56.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to Contracting Authority, in its sole discretion; and
 - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 42.1(a)(xx)(B), Contracting Authority shall:
 - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and

(II) give consideration, where appropriate, to action other than termination of this Project Agreement; or

(xxi) Project Co failing to comply with Section 27.7 or 27.12.

42.2 Notification of Occurrence

(a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify Contracting Authority of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

42.3 Right to Termination

(a) On the occurrence of a Project Co Event of Default, or at any time after Contracting Authority becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a Project Co Event of Default has occurred, Contracting Authority may, subject to Section 42.4(a), terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice.

42.4 Remedy Provisions

(a) In the case of a Project Co Event of Default referred to in Sections 42.1(a)(i)(B), 42.1(a)(i)(C), 42.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 42.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 42.1(a)(i)(B) or 42.1(a)(i)(C)), 42.1(a)(iii), 42.1(a)(iv), 42.1(a)(vii), 42.1(a)(viii), 42.1(a)(ix), 42.1(a)(x) (where the Project Co Event of Default referred to in Section 42.1(a)(x) is capable of being remedied), 42.1(a)(xv), 42.1(a)(xvii), 42.1(a)(xviii) (where the Project Co Event of Default referred to in Section 42.1(a)(xviii) is not in respect of insurance), 42.1(a)(xix), 42.1(a)(xx), or 42.1(a)(xxi), Contracting Authority shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice, and Project Co shall:

(i) within five Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Contracting Authority, acting reasonably; and

(ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.

(b) Where Project Co puts forward a plan and schedule in accordance with Section 42.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, Contracting Authority shall have five Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and

schedule and that the 30 day limit will apply, failing which Contracting Authority shall be deemed to have accepted the longer period in the plan and schedule.

- (c) If a Project Co Event of Default, of which a notice of default was given under Section 42.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the performance of the Correctional Complex Activities; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 42.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 42.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 42.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then Contracting Authority may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (d) Notwithstanding that Contracting Authority may give the notice referred to in Section 42.4(a), and without prejudice to the other rights of Contracting Authority in this Section 42.4, at any time during which a Project Co Event of Default is continuing, Contracting Authority may, at Project Co's risk and expense, take such steps as Contracting Authority considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 42.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

42.5 Replacement of Non-Performing Service Provider

- (a) Contracting Authority may, acting reasonably, require Project Co to terminate the Service Contract and ensure that a replacement Service Provider is appointed in accordance with Section 56.3 to provide the Project Co Services within 60 days:
- (i) as an alternative to termination of this Project Agreement pursuant to Sections 42.3 or 42.4, in any circumstance in which Contracting Authority could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Service Provider or otherwise relates to the Project Co Services; or

- (ii) if Project Co accrues, in any rolling 6 Payment Periods during the Operational Term, more than:
 - (A) [REDACTED] Failure Points in respect of Availability Failures;
 - (B) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Plant Services;
 - (C) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
 - (D) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FM Help Desk;
 - (E) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services and Management of Hazardous Substances, Waste and Recycling Services; or
 - (F) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Pedestrian Circulation Routes & Parking Areas Maintenance Services, Roads & Grounds Maintenance Services and Pest Control Services,

provided that this Section 42.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If Contracting Authority exercises its rights under this Section 42.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or provision of the Project Co Services, until such time as a replacement Service Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate provision of the Project Co Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Project Co Services, then, without prejudice to the other rights of Contracting Authority in this Section 42.5, Contracting Authority itself may perform, or engage others (including a third party) to perform, the Project Co Services and Section 30.4 shall apply, *mutatis mutandis*, to the Project Co Services. Any Dispute in respect of the interim management or provision of the Project Co Services may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the Service Contract, and to secure a replacement Service Provider, in accordance with this Section 42.5, Contracting Authority shall be entitled to exercise its termination rights in accordance with Sections 42.3 and 42.4, as applicable.
- (d) Where a replacement Service Provider is appointed in accordance with this Section 42.5, [REDACTED]% of the Failure Points, accrued by Project Co prior to such replacement, shall be cancelled.

42.6 Contracting Authority's Costs

- (a) Project Co shall reimburse Contracting Authority for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Contracting Authority in exercising its rights under this Section 42, including any relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs.

42.7 No other Rights to Terminate

- (a) Contracting Authority shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 42 and 44.

43. CONTRACTING AUTHORITY DEFAULT**43.1 Contracting Authority Events of Default**

- (a) For the purposes of this Project Agreement, "**Contracting Authority Event of Default**" means any one or more of the following events or circumstances:

- (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Contracting Authority pursuant to Section 31.13(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:

- (A) in respect of any Construction Period Payment or the Substantial Completion Payment, such failure continues for 10 Business Days;
- (B) subject to Section 43.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
- (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
- (D) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for 90 days,

in any such case, from receipt by Contracting Authority of a notice of non-payment from or on behalf of Project Co;

- (ii) Contracting Authority committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or

- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”).

43.2 Project Co’s Options

- (a) On the occurrence of a Contracting Authority Event of Default and while the same is continuing, Project Co may give notice to Contracting Authority of the occurrence of such Contracting Authority Event of Default, which notice will specify the details thereof, and, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, may:
 - (i) suspend performance of the Works and the Project Co Services until such time as Contracting Authority has remedied such Contracting Authority Event of Default; or
 - (ii) if such Contracting Authority Event of Default has not been remedied within 30 days of receipt by Contracting Authority of notice of the occurrence of such Contracting Authority Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

43.3 Project Co’s Costs

- (a) Contracting Authority shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 43, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

43.4 No Other Rights to Terminate

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

44. RELIEF EVENT AND NON-DEFAULT TERMINATION

44.1 Termination for Relief Event

- (a) Subject to Section 44.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 40.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 44.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under

any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than [REDACTED]% of the Maximum Service Payment for the relevant Payment Period.

44.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 41.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

44.3 Termination for Convenience

- (a) Contracting Authority shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co.
- (b) In the event of notice being given by Contracting Authority in accordance with this Section 44.3, Contracting Authority shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Project Co Services, or any element of the Project Co Services, where such Works or Project Co Services have not yet been commenced.

44.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

45. EFFECT OF TERMINATION

45.1 Termination

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 44.4, this Section 45 shall apply in respect of such termination.

45.2 Continued Effect – No Waiver

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

45.3 Continuing Performance

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination), notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 45.

45.4 Consequences of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 44.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 52.1, Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), such part of the Works and Facility as shall have been constructed and such items of the Plant and equipment, including Equipment and Existing Equipment, as shall have been procured by Project Co, and, if Contracting Authority so elects:
- (A) all plant, equipment and materials (other than those referred to in Section 45.4(a)(i)(B)) on or near the Site shall remain available to Contracting Authority for the purposes of completing the Works; and
- (B) all construction plant and equipment shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;
- (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 52.1 or Section 45.4(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the Equipment, SolGen Equipment and Existing Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

- (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and each Subcontractor (including the Construction Contract and the Service Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor or the Service Provider shall be made by Contracting Authority pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Contracting Authority so elects, execute such sale) to Contracting Authority at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by Contracting Authority in connection with the operation of the Facility or the provision of the Project Co Services;
- (vi) Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of:
 - (A) the most recent As Built Drawings in the format that Contracting Authority, acting reasonably, considers most appropriate at the time showing all alterations made to the Facility since the Substantial Completion Date;
 - (B) the most recent maintenance, operation and training manuals for the Facility; and
 - (C) the Plant Services manual, fully updated;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Facility;
- (viii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 34, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Contracting Authority); and
- (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 44.4, the Facility and elements of the Facility shall be in the condition required in accordance with Section 47 and Schedule 24 – Expiry Transition Procedure.

- (b) If any operation or maintenance requirement of the Facility (or any element thereof) is dependent upon the availability of any stocks of material or other assets, road vehicles, spare parts, critical or custom made spare parts, or other moveable property owned or stored off-site by Project Co, any Project Co Parties or other vendors or service providers, Project Co shall make available to Contracting Authority, three months prior to the Expiry Date, a comprehensive list of such operation or maintenance requirements and the items upon which they are dependent, which list shall include, but not be limited to, a description of the relevant equipment, system, task, services, activity, location, source, vendor details, availability details, frequency of use and any other information Contracting Authority may require to ensure the continuous, proper and safe operation and maintenance of the Facility (including all elements thereof).

45.5 Ownership of Information

- (a) Subject to Section 48, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of Contracting Authority and upon termination of this Project Agreement shall be provided or returned to Contracting Authority, as applicable, in electronic format acceptable to Contracting Authority, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

45.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 45.

45.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued provision of Project Co Services pursuant to Sections 3.2 and 3.3 of Schedule 23 – Compensation on Termination if applicable:
- (i) cooperate fully with Contracting Authority and any successors providing to Contracting Authority services in the nature of any of the Project Co Services or any part of the Project Co Services in order to achieve a smooth transfer of the manner in which Contracting Authority obtains services in the nature of the Project Co Services and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of any person at the Facility, including any Province Person, Inmate, Visitor or other person;
 - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 45.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from Contracting Authority requiring it to do so, Contracting Authority may, without being

responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;

- (iii) forthwith deliver to the Contracting Authority Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and
 - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 48, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
- (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 24 – Expiry Transition Procedure, shall leave the Site and the Facility in a safe, clean and orderly condition.
- (b) If Contracting Authority wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Project Co Services or any of them, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with Contracting Authority fully in such competition process, including by:
 - (i) providing any information which Contracting Authority may reasonably require to conduct such competition, including all information contained in the Plant Services manual, other than Sensitive Information; and
 - (ii) assisting Contracting Authority by allowing any or all participants in such competition process unrestricted access to the Site, the Existing Facilities and the Facility.

45.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 45, this Project Agreement shall terminate and, except as provided in Section 45.9, all rights and obligations of Contracting Authority and Project Co under this Project Agreement shall cease and be of no further force and effect.

45.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16.1, 16.2, 16.3(a) 23.6, 24.15, 26.8, 29.4, 30, 31.6, 31.8, 31.13, 31.14, 31.15, 32, 33, 34, 42.6, 43.3, 44.4, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57.3, 58.1, 61.4, 61.8, 61.9, 61.10, 61.11, 61.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 – Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 36 – Energy Matters and any other provisions of this Project Agreement which are expressed to survive termination or which are required to

give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 44.4.

46. COMPENSATION ON TERMINATION

46.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 – Compensation on Termination shall apply and Contracting Authority shall pay Project Co any applicable compensation on termination.

46.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 46.2(b), any compensation paid pursuant to this Section 46, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 46.2(a) shall be without prejudice to:
 - (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 31.13 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Breach of Refinancing Termination Sum or any other termination sum, as the case may be;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 45.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
 - (iii) any amount owing to Contracting Authority in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28 and

- (D) any fraud or other criminal offence committed against Contracting Authority.

47. EXPIRY TRANSITION PROCEDURE

47.1 Expiry Transition

- (a) Project Co and Contracting Authority shall each comply with the requirements of Schedule 24 – Expiry Transition Procedure.

48. INTELLECTUAL PROPERTY

48.1 Representation and Warranty

- (a) Project Co represents, warrants and covenants to Contracting Authority and agrees that:
 - (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to Contracting Authority herein;
 - (ii) Project Co has and shall have the right to execute, and shall ensure that the Project Co Parties have the right to execute, all assignments of Intellectual Property, Project Data and Jointly Developed Materials contemplated under this Section 48; and
 - (iii) the Project Data and the Intellectual Property Rights and their use by Contracting Authority and the Province Persons do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property Rights, and, as of the date of this Project Agreement, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

48.2 Delivery of Project Data and Intellectual Property Rights

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, Contracting Authority free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to Contracting Authority on the aforesaid terms of this Section 48.2, for any and all of the Approved Purposes.

48.3 Licence of Project Data and Intellectual Property Rights

- (a) Project Co:
 - (i) hereby grants to Contracting Authority an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
 - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor or the Service Provider, obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that such licence may, in respect of the Construction Contractor's and the Service Provider's Intellectual Property Rights

that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and

- (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor or the Service Provider), obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 48.3 and Section 48.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

48.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and Contracting Authority pursuant to this Project Agreement or in relation to the Facility, the Site, the Existing Facilities or the Project Operations (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that Contracting Authority shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of Contracting Authority, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Contracting Authority hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to Contracting Authority.

48.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 48 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Contracting Authority or its nominee to access and otherwise use (as such term is defined in Section 48.3(b)), subject to the payment by Contracting Authority of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 48.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 48 in accordance with Good Industry Practice. Project Co shall submit to the Contracting Authority Representative Project Co's proposals for the back-up and storage in safe custody of such

data, materials and documents and Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Contracting Authority Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the Contracting Authority Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 48.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

48.6 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against any Province Person which arises out of the alleged infringement or misappropriation of any third parties rights in or to any Project Data or Intellectual Property Rights or the use thereof by Contracting Authority or any Province Person or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by Contracting Authority or any Province Person otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless Contracting Authority and such Province Person from and against all such demands, claims, actions and proceedings and Section 53.3 shall apply.

48.7 Contracting Authority Trade-Marks

- (a) Project Co shall not:
- (i) use any Contracting Authority Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to Contracting Authority and Project Co, each acting reasonably; or
 - (ii) use the names or any identifying logos or otherwise of Contracting Authority or the Contracting Authority Representative in any advertising or permit them so to be used except with the prior written consent of Contracting Authority.

48.8 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 48 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

48.9 Government Use of Documents

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with Contracting Authority's ability to use this Project Agreement in any manner desired by Contracting Authority.
- (b) Project Co hereby consents to the use by Contracting Authority of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by Contracting Authority (in consultation with Project Co) of any information supplied in confidence to Contracting Authority by Project Co in circumstances where disclosure may be refused under section 17(1) of FIPPA.

48.10 Restrictions

- (a) **[Intentionally Deleted]**
- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including, without limitation, use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of Contracting Authority or the Confidential Information of Contracting Authority, including, without limitation, the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of Contracting Authority or the Confidential Information of Contracting Authority, including, without limitation, the Output Specifications.

49. CONFIDENTIALITY / COMMUNICATIONS**49.1 Disclosure**

- (a) Subject to Sections 49.1(b), 49.1(c) and 49.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, Contracting Authority has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as Contracting Authority, in its sole discretion, may consider appropriate. In exercising its discretion, Contracting Authority will be guided by the principles set out in Sections 49.1(b) and 49.1(c).
- (b) Contracting Authority will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 49.1(b), but subject to Section 49.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), Contracting Authority may disclose such information.
- (d) Notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that this Project Agreement and any or all of the terms thereof are subject to the Open Data Directive and that Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

49.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any

information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), Contracting Authority shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 49.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.

- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 49.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Contracting Authority shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

49.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that, subject to compliance with FIPPA, Contracting Authority will be free to use, disclose or publish (including on websites) any information, including Confidential Information on such terms and in such manner as Contracting Authority sees fit.
- (b) For greater certainty, Project Co acknowledges and agrees that, subject only to the removal of any information which Project Co is (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by Contracting Authority.

49.4 Freedom of Information and Protection of Privacy Act

- (a) The Parties acknowledge and agree that FIPPA applies to Contracting Authority, and that Contracting Authority is required to fully comply with FIPPA.
- (b) Contracting Authority shall, within the time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co (or any Project Co Party) or of Contracting Authority's intention to voluntarily release any information or documents which contain Confidential Information that relates to Project Co (or any Project Co Party).

49.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 49 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:

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- (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders, and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Contracting Authority's alternate procurement and financing policies and framework. Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care.
- (f) Without limiting the generality of this Section 49.5, Project Co shall comply with the document control and security protocol submitted by Project Co in accordance with Schedule 10 – Review Procedure, which protocol shall prescribe limitations on the use, disclosure and storage of the Project Agreement, the Project Documents and any other Confidential Information specified by Contracting Authority (the “**Document Control and Security Protocol**”). The Document Control and Security Protocol shall be the first document submitted by Project Co pursuant to Schedule 10 – Review Procedure and, in any event, shall be submitted within five (5) Business Days following Financial Close.

49.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”) other than Government Sensitive Information and other than Personal Information will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;

- (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to Contracting Authority upon a termination of this Project Agreement, pursuant to Section 45 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facility, the operation, maintenance or improvement of the Facility, or any other operations or services the same as, or similar to, the Project Operations; or
- (ix) the information would not be exempt from disclosure under FIPPA.

49.7 Survival of Confidentiality

- (a) The obligations in Section 49.1 to Section 49.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of this Project Agreement.

49.8 Communications

- (a) The Parties shall comply with the provisions of Schedule 18 – Communications.

50. PERSONAL INFORMATION

50.1 General

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Contracting Authority and (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by Contracting Authority.

- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 50.
- (e) Project Co shall allow Contracting Authority on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 50 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Project Co or each Project Co Party's handling of Personal Information.
- (f) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those of this Section 50.

50.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure and shall require each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require Project Co Parties to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall keep confidential and shall require each Project Co Party to keep confidential all Personal Information, and shall restrict and shall require each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 50 and shall include provisions in all Subcontracts to require all Project Co Parties to keep confidential all Personal Information that any of them may encounter or obtain during the course of their duties.
- (c) Upon termination of this Project Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.

- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 50.2(c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform Contracting Authority of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 50.
- (f) Contracting Authority may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.
- (g) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Laws governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.

50.3 Conflict and Survival

- (a) To the extent of any conflict or inconsistency between this Section 50 and any other provision of this Project Agreement, this Section 50 shall prevail.
- (b) The obligations in this Section 50 shall survive the termination of this Project Agreement.

51. INSURANCE AND PERFORMANCE SECURITY

51.1 General Requirements

- (a) Project Co and Contracting Authority shall comply with the provisions of Schedule 25 – Insurance and Performance Security Requirements.

51.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or Contracting Authority of their respective liabilities and obligations under this Project Agreement.

52. TITLE

52.1 Title

- (a) Title to each item and part of the Facility and the Equipment and Existing Equipment, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Contracting

Authority (or as Contracting Authority may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to Contracting Authority (or as Contracting Authority may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

53. INDEMNITIES

53.1 Project Co Indemnities to Contracting Authority

(a) Project Co shall indemnify and save harmless Contracting Authority, the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (ii) any physical loss of or damage to all or any part of the Lands, the Facility and/or the Existing Facilities, or to any equipment, assets or other property related thereto;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party; or
- (v) any other loss or damage of any third party

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (A) the breach of this Project Agreement by Contracting Authority; or
- (B) in respect of Section 53.1(a)(i), any deliberate or negligent act or omission of Contracting Authority or any Province Person; or
- (C) in respect of Sections 53.1(a)(ii), 53.1(a)(iii), 53.1(a)(iv) or 53.1(a)(v), any act or omission of Contracting Authority or any Province Person; or
- (D) a deliberate or negligent act or omission of a Visitor or an Inmate that results in undue interference with Project Co's performance of the Project Co Services and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of Contracting Authority or an appropriate Province Person, except to the extent:
 - (I) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or

- (II) such Visitor or Inmate is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless Contracting Authority, each Province Person and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless Contracting Authority, each Province Person and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or
 - (ii) any Project Co Contamination;except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Province Person.
- (d) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Construction Contract or the Service Contract, as the case may be, and for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights.
- (e) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Contracting Authority, or from the date identified (if any) applicable to an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

53.2 Contracting Authority Indemnities to Project Co

- (a) Contracting Authority shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

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- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by Contracting Authority or any act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
- (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by Contracting Authority any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) Contracting Authority shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Contracting Authority herein.
- (c) Contracting Authority shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by Contracting Authority pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Contracting Authority; or (iii) an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

53.3 Conduct of Claims

- (a) This Section 53.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 53, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably

practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.

- (c) Subject to Sections 53.3(d), 53.3(e) and 53.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 53.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
 - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 53.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 53.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 53.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or

appeal of any claim, or of any incidental negotiations, to which Section 53.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 53.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.

- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 53.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

53.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 61.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

54. LIMITS ON LIABILITY

54.1 Indirect Losses

- (a) Subject to Section 54.1(b), without prejudice to Contracting Authority’s rights under the Payment Mechanism, or the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;

- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, “**Indirect Losses**”).

- (b) With respect to the indemnity in Section 53.1(a)(i) only, the exceptions in Sections 54.1(a)(ii) and 54.1(a)(iii) shall not apply as a result of, or in relation to, Contracting Authority’s loss of use of the Facility and/or the Existing Facilities or a portion thereof, which for the purposes of Section 53.1(a)(i), shall be Direct Losses.

54.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, neither Contracting Authority nor any Province Persons shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to Contracting Authority or any Province Person in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

54.3 Sole Remedy

- (a) Subject to:
 - (i) any other rights of Contracting Authority expressly provided for in this Project Agreement; and
 - (ii) Contracting Authority’s right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by Contracting Authority pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by Contracting Authority pursuant to Section 46,

the sole remedy of Contracting Authority in respect of a failure to perform the Project Co Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 54.3(a) shall prevent or restrict the right of Contracting Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

54.4 Maximum Liability

- (a) Subject to Section 54.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 53 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co’s maximum aggregate liability in respect of all claims under Section 53.1(a)(i) and 54A shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 54.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

54A LIQUIDATED DAMAGES

- (a) In the event that a Substantial Completion Certificate has not been issued on or before the date which is 30 days following the Scheduled Substantial Completion Date (the “**LD Commencement Date**”) Project Co shall pay the Liquidated Damages from the LD Commencement Date until the earlier of (i) the Substantial Completion Date and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms. Contracting Authority and Project Co agree that such Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of Administrative Costs which Contracting Authority will incur as a result of Project Co’s failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, and which Administrative Costs Project Co agrees with Contracting Authority it would be difficult or impossible to quantify. Subject and without prejudice to the other remedies of Contracting Authority herein (including remedies for termination for a Project Co Event of Default), such payment shall constitute full and final satisfaction of any and all Administrative Costs that may be claimed by Contracting Authority as a result of Project Co not achieving Substantial Completion by the Scheduled Substantial Completion Date. Project Co agrees with Contracting Authority that such Liquidated Damages shall be payable whether or not Contracting Authority incurs or mitigates such Administrative Costs, and that Contracting Authority shall have no obligation to mitigate any such Administrative Costs. Project Co agrees that it is, and shall be, estopped from alleging that such Liquidated Damages are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such Administrative Costs were not incurred.
- (b) Notwithstanding Section 54A(a), Project Co’s obligation to indemnify Contracting Authority pursuant to Section 53.1(a)(i) shall remain unaffected by, and shall apply in addition to, any Liquidated Damages payable by Project Co pursuant to this Section 54A, provided, however, that any amount for which Project Co is required to indemnify Contracting Authority pursuant to 53.1(a)(i) shall exclude administrative costs and expenses in respect of which Liquidated Damages have been paid or are payable.

- (c) Except as expressly provided herein, nothing in this Section 54A shall restrict, limit, prejudice or in any other way impair the rights or remedies of the parties under any other provision of this Project Agreement.
- (d) Where Liquidated Damages are incurred, Project Co shall, without prejudice to Contracting Authority's rights under Section 31.13(a), pay such amounts to Contracting Authority on a quarterly basis, on the last Business Day of each calendar quarter, commencing the first calendar quarter following the LD Commencement Date.

55. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 – Dispute Resolution Procedure.

56. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

56.1 Project Co Assignment

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the Service Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of Contracting Authority, which shall, in any event, be conditional on Project Co paying to Contracting Authority any amount calculated under Section 56.6(a)(ii) and no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or any of its Affiliates is a Restricted Person or a person whose standing or activities: (i) are inconsistent with SolGen's role (in its reasonable opinion) generally in the Province or with respect to the Correctional Complex Activities; (ii) may compromise the reputation of Contracting Authority, SolGen and/or the Province; (iii) may compromise the integrity of the Facility; or (iv) are inconsistent with the nature of the Province's correctional system, so as to affect public confidence in that system.
- (b) Section 56.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if Contracting Authority so requires.

56.2 Contracting Authority Assignment

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties:
 - (i) to the Province;
 - (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Crown;
 - (iv) an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project

Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and

- (v) in circumstances other than those described in Sections 56.2(a)(i) to 56.2(a)(iv), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 56.2.

56.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the Service Contract, and shall not permit the Construction Contractor or the Service Provider to subcontract any interest in the Construction Contract or Service Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities; (i) are inconsistent with SolGen's role (in its reasonable opinion) generally in the Province or with respect to the Correctional Complex Activities; (ii) may compromise the reputation of Contracting Authority, SolGen and/or the Province; (iii) may compromise the integrity of the Province or the Facility; or (iv) are inconsistent with the nature of the Province's correctional system, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor or the Service Provider unless Project Co has complied with Sections 7.2(a), 56.3(c) and 56.3(d) or received the prior written consent of Contracting Authority.
- (c) Subject to Section 56.3(d), if either the Construction Contract or the Service Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor or the Service Provider, as the case may be, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to Contracting Authority's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or Service Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by Contracting Authority, acting reasonably.

56.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management,

actions or policies of Project Co or any of the Project Co Partners or in relation to the operation, management and ownership of the Project.

- (b) No Change in Ownership of Project Co or of any Control Party shall be permitted:
- (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with SolGen's role (in its reasonable opinion) generally in the Province or with respect to the Correctional Complex Activities; (ii) may compromise the reputation of Contracting Authority, SolGen and/or the Province; (iii) may compromise the integrity of the Province or the Facility; or (iv) are inconsistent with the nature of the Province's correctional system, so as to affect public confidence in that system; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations or the Correctional Complex Activities.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, Contracting Authority may:
- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
 - (ii) in any other circumstance, require a Change in Ownership so that such Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Contracting Authority, in its discretion.
- (d) Project Co shall provide notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such notice shall include:
- (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership; and
 - (ii) a statement identifying the Excess Equity Gain arising from such Change in Ownership together with supporting calculations and documents.
- (e) Subject to Sections 56.4(a), (b) and (c) and to the payment by Project Co of any Excess Equity Gain under Section 56.6(a)(i), no Change in Control of Project Co or of any Control Party shall be permitted without the prior written consent of Contracting Authority.
- (f) Project Co shall provide notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such notice shall include:

- (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following any such proposed Change in Control;
- (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control; and
- (iii) a statement identifying the Excess Equity Gain which would arise from such proposed Change in Control together with supporting calculations and documents.

Following the delivery to Contracting Authority of the notice referred to in this Section 56.4(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.

- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities: (A) are inconsistent the Contracting Authority's role (in Contracting Authority's reasonable opinion) as a correctional facility; (B) may compromise Contracting Authority's reputation or integrity; or (C) are inconsistent with the nature of the Province's correctional system, so as to affect public perception of that system.
- (h) Notwithstanding the definition of "Control Parties" set out in Schedule 1 – Definitions and Interpretation, this Section 56.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (i) Section 56.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the "**Relevant Entity**") owned by an employee of such Relevant Entity, unless such changes (i) individually or in the aggregate determined since the date of this Project Agreement, would result in a Change in Control of Project Co, in which case Section 56.4(f) shall apply; or (ii) would result in an obligation to compensate Contracting Authority in accordance with Section 56.6 of this Project Agreement, in which case Section 56.4(d) and Section 56.6 shall apply.

56.5 Contracting Authority Due Diligence

- (a) Project Co shall promptly reimburse Contracting Authority for Contracting Authority's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of Contracting Authority pursuant to, or Contracting Authority determination of Project Co's compliance with, Section 56.1, 56.3 or 56.4 whether or not such consent is granted.

56.6 Gain Share

- (a) Contracting Authority shall be entitled to receive a [REDACTED]% share of:
 - (i) any Excess Equity Gain arising from a Change in Ownership of Project Co; and
 - (ii) the amount from the proceeds of a sale of any of Project Co's assets to a third party, which sale includes an assignment, transfer, disposition of or other alienation of an interest in the

Project Agreement by Project Co made in accordance with Section 56.1, that is equal to the amount that would have been payable in accordance with Section 56.6(a)(i) if such sale had proceeded as a Change in Ownership of Project Co.

57. PROHIBITED ACTS

57.1 Definition

(a) The term “**Prohibited Act**” means:

- (i) offering, giving or agreeing to give to Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

provided that this Section 57.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Contracting Authority, provided that this Section 57.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 57;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Contracting Authority or any other public body.

57.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Contracting Authority shall be entitled to act in accordance with the following:
- (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Contracting Authority may give written notice to Project Co and Section 42 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Contracting Authority may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 56.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 57.2(a)(i) to 57.2(a)(iv), then Contracting Authority may give notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.
- (b) Any notice of termination under this Section 57.2 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 57.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 57.

57.3 Permitted Payments

- (a) Nothing contained in this Section 57 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

57.4 Notification

- (a) Project Co shall notify Contracting Authority of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

57.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 57, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

58. NOTICES

58.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Project Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co: EllisDon Infrastructure TBCC General Partnership
[REDACTED]

Email: [REDACTED]
Fax: [REDACTED]
Attn.: [REDACTED]

If to Contracting Authority:
c/o Ontario Infrastructure and Lands
Corporation: 1 Dundas St. West, 20th Floor
Toronto, ON M5G 1Z3

Email: [REDACTED]
Attn.: [REDACTED]

with a copy to: Contracting Authority Representative

Email: [REDACTED]
Attn.: [REDACTED]

58.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 58.1, where any Notice is to be provided or submitted to the Contracting Authority Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission, as follows:

If to Project Co Representative: [REDACTED]

If to the Contracting Authority Representative: [REDACTED]

With a copy to: [REDACTED]

58.3 Electronic Submission

- (a) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 58.3.

58.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 58.1 or 58.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

58.5 Deemed Receipt of Notices

- (a) Subject to Sections 58.5(b), 58.5(c) and 58.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but

shall be made or given by personal delivery or by electronic submission in accordance with this Section 58.

- (c) If any Notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

58.6 Service on Contracting Authority

- (a) Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 58.

59. EMERGENCY AND SECURITY MATTERS

59.1 Emergency

From and after the Substantial Completion Date, Contracting Authority or SolGen may at any time notify Project Co that an Emergency exists and if either does so and until a reasonable period after receipt of a notice from Contracting Authority (such period to be determined by Contracting Authority in consultation with Project Co (both parties acting reasonably)) to the effect that the Emergency has ended, Project Co:

- (a) shall, subject to Schedule 22 - Variation Procedure (if compliance with such plan constitute a Variation), comply with such portions of the Continuity of Operations Plans as may be appropriate;
- (b) shall, subject to Schedule 22 - Variation Procedure (if compliance with such plan constitute a Variation), comply with any additional or overriding procedures as may be determined or notified to it by Contracting Authority or by any other statutory body (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap or conflict with the procedures mentioned in Section 59.1(a)); and
- (c) shall, subject to Schedule 22 - Variation Procedure (if compliance with such requirements constitutes a Variation), comply in particular with any requirements of Contracting Authority with respect to confidentiality to the extent that the Project Co Parties have been provided with such requirements.

59.2 Photographs/Visual Records

- (a) Subject to Sections 5.1(a)(ix) and 5.1(b) of Schedule 18 – Communications, Project Co shall:
 - (i) not, other than (A) for design or construction purposes or otherwise in connection with the proper carrying out of the Works prior to Final Completion, or (B) as specifically required to carry out Project Co's obligations as a provider of maintenance, repair and lifecycle services in accordance with the terms of this Project Agreement, take or permit to be taken

by any Project Co Party any photographs, videos or other visual records of the Existing Facilities and/or the Facility or the Site or any part thereof unless Project Co has obtained the prior written consent of the Contracting Authority Representative;

- (ii) take all steps necessary to ensure that no such photographs or other visual records taken pursuant to Section 59.2(a)(i) be published or otherwise circulated by any person employed or engaged by it other than photographs or other visual records of components of the Facility that are in unsecure or unrestricted areas of the Facility, unless Project Co has obtained the prior written consent of the Contracting Authority Representative; and
- (iii) not use the names or any identifying logos or otherwise of Contracting Authority or SolGen or the Contracting Authority Representative in any advertising or permit them so to be used except with the prior written consent of Contracting Authority.

60. CONTRACTING AUTHORITY DESIGNATE

60.1 Right to Designate

At any time and from time to time, the Province may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Project Agreement (including review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to Contracting Authority for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of notices and documentation to Contracting Authority, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Province has notified Project Co in writing that such designated person is no longer the person designated by the Province hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice). The Province shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Province to delegate administrative responsibilities hereunder as set forth in this Section 60.1.

61. GENERAL

61.1 Amendments

- (a) This Project Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Project Agreement.

61.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with

respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 24.4(i) and 24.12(g).

- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

61.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between Contracting Authority and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between Contracting Authority and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
 - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, WSIB or other similar levies with respect to any persons employed or engaged by the other Party;
 - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
 - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

61.4 General Duty to Mitigate

- (a) Contracting Authority and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

61.5 Actual Knowledge

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and Contracting Authority shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of Project Co and in the case of Contracting Authority, its directors, officers and senior management, and the Contracting Authority Representative or the Project Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the “knowledge” of Project Co or of Contracting Authority, shall be construed in a manner consistent with the foregoing sentence.

61.6 Entire Agreement

- (a) Except where provided otherwise in this Project Agreement, this Project 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 Project Agreement.

61.7 No Reliance

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
 - (ii) this Section 61.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

61.8 Severability

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

61.9 Enurement

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both Contracting Authority and Project Co are parties shall enure to the benefit of, and be binding on, Contracting Authority and Project Co and their respective successors and permitted transferees and assigns.

61.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

61.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

61.12 Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

61.13 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

61.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

61.15 Proof of Authority

- (a) Contracting Authority and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to Contracting Authority or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind Contracting Authority or Project Co, as applicable.

61.16 Counterparts

- (a) This Project 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

61.17 Province Persons as Third Party Beneficiaries

- (a) The provisions of Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4, 8.1(d), 9.2(a), 9.4(b), 9.5(a)(v), 16.1(a), 18.3(j), 19.1, 19.2, 24.15, 25.3(a), 26.4(b), 28.2(a), 28.2(e), 30.1, 33.2(e), 48.1, 48.6, 53.1 and 54.2 and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or a Contracting Authority Party, as applicable, (collectively, the “**Third Party Beneficiary Provisions**”) are:
- (i) intended for the benefit of each Province Person, or Contracting Authority Party, as applicable and, if so set out in the relevant Section, each Province Person’s or Contracting Authority Party’s, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each Province Person, the “**Province Person Third Party Beneficiaries**”, and in respect of each Contracting Authority Party, the “**Contracting Authority Third Party Beneficiaries**”); and
- (ii) are in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) Contracting Authority shall hold the rights and benefits of each of the Third Party Beneficiary Provisions in trust for and on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable, and Contracting Authority hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable.

61.18 Copyright Notice

- (a) The Parties acknowledge that Queen’s Printer for Ontario is the exclusive owner of the copyright in this Project Agreement.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Project Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister of
Government and Consumer Services, as
represented by Ontario Infrastructure and Lands
Corporation**

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**
I have authority to bind the corporation.

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**
I have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
 - 1.1 “**10-Day Notice**” has the meaning given in Section 24.4(a)(i) of the Project Agreement.
 - 1.2 “**Accessibility Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
 - 1.3 “**Account Trustee**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
 - 1.4 “**Actual Cumulative Construction Period Payments**” has the meaning given in Schedule 19 – Construction Period Payments.
 - 1.5 “**Actual Eligible Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.
 - 1.6 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
 - 1.7 “**Ad-Hoc Services**” has the meaning given in Part IV of Schedule 15 – Output Specifications.
 - 1.8 “**Ad-Hoc Services Request**” has the meaning given in Schedule 20 – Payment Mechanism.
 - 1.9 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor, the Service Provider or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works.
 - 1.10 “**Additional Works**” means those works in relation to the Facility which are not Works or Project Co Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
 - 1.11 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
 - 1.12 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 – Compensation on Termination.
 - 1.13 “**Adjusted Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
 - 1.14 “**Administrative Costs**” means, for the purposes of Section 54A of the Project Agreement, only those costs and expenses incurred by Contracting Authority in the ordinary course in relation to staffing, the Design Conformance Consultant and the Independent Certifier, in each case assuming normal utilization.
 - 1.15 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners, as the case may be.

Thunder Bay Correctional Complex Project

- 1.16 “**Ancillary Documents**” means the Construction Contract, the Service Contract, the Performance Security, [REDACTED], the Interface Agreement and [REDACTED].
- 1.17 “**Annual Energy Target**” has the meaning given in Schedule 36 – Energy Matters.
- 1.18 “**Annual Insurance Report**” has the meaning given in Section 7.2 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.19 “**Annual Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.20 “**Annual Service Plan**” has the meaning given in Part IV of Schedule 15 - Output Specifications.
- 1.21 “**Anti-Racism**” means a process, a systematic method of analysis, and a proactive course of action rooted in the recognition of the existence of racism, including Systemic Racism. Anti-Racism actively seeks to identify, remove, prevent, and mitigate racially inequitable outcomes and power imbalances between groups and change the structures that sustain inequities.
- 1.22 “**Anticipated COVID-19 Impact End Date**” means the date that is 180 days after Financial Close.
- 1.23 “**Anticipated Final Completion Date**” has the meaning given in Section 24.11(a) of the Project Agreement.
- 1.24 “**Anticipated Lifecycle Replacement Year**” means the year, or years, falling within the Operational Term or within the 10-year period following the Expiry Date, as indicated in Appendix A to Schedule 24 – Expiry Transition Procedure, in which an element of the Facility is expected to be replaced, refreshed or refurbished.
- 1.25 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.26 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any other Province Person.
- 1.27 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.28 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.

Thunder Bay Correctional Complex Project

- 1.29 “**Approved Purposes**” means:
- (a) Contracting Authority and the Province Persons performing the Correctional Complex Activities (and their operations relating to the performance of the Correctional Complex Activities), their obligations under the Project Agreement and/or any other activities in connection with the Facility, the Existing Facilities, and/or the Site;
 - (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Facility, and/or the performance of any other operations the same as, or similar to, the Project Operations; and
 - (c) the development by SolGen and/or the Province of best practices for correctional facilities in Ontario.
- 1.30 “**Archaeological Reports**” has the meaning given in Schedule 38 – Reports.
- 1.31 “**Area Weighting Percentage**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.32 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.33 “**As-built Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.34 “**Associated Liabilities**” has the meaning given in Section 32.7(b) of the Project Agreement.
- 1.35 “**ASHRAE**” means the American Society for Heating Refrigeration and Air-Conditioning Engineers.
- 1.36 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.37 “**Availability Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.38 “**Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.39 “**Background Information**” means any and all drawings, reports (including the Technical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.40 “**Base Case Equity IRR**” means [REDACTED]%, which, for greater certainty, is calculated on a pre-tax basis.
- 1.41 “**Base Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.42 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1(b) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.43 “**Bedding-In Period**” has the meaning given in Schedule 20 – Payment Mechanism.

Thunder Bay Correctional Complex Project

- 1.44 “**Beneficiary**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.45 “**Breach of Refinancing Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.46 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.47 “**Building Permit**” means the building permit issued by the City of Thunder Bay with respect to the construction of the Facility on the Site.
- 1.48 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.49 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.50 “**CaGBC**” means the Canada Green Building Council.
- 1.51 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.52 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.53 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.54 “**Cash Allowance Account**” means None.
- 1.55 “**Cash Allowance Amount**” means Nil.
- 1.56 “**Cash Allowance Items**” means None.
- 1.57 “**CDB**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.58 “**CDB Chair**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.59 “**CDB Expiry Date**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.60 “**CDB Member Agreement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.61 “**CDB Member Statement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.

Thunder Bay Correctional Complex Project

- 1.62 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.63 “**Certification Services**” has the meaning given in the Independent Certifier Agreement.
- 1.64 “**Certification Services Variation**” has the meaning given in the Independent Certifier Agreement.
- 1.65 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 13.1(i) of the Project Agreement.
- 1.66 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority, through any contractual right or other power or interest with or over a person, to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person.
- 1.67 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.68 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units or any other ownership interest of such person, or in the direct or indirect power to vote or transfer any of the shares or units or any other ownership interest of such person.
- 1.69 “**Cleaning Services**” means those cleaning services to be carried out pursuant to Section 3.7 of Part IV of Schedule 15 – Output Specifications.
- 1.70 “**Commercial Close**” means the date of the Project Agreement.
- 1.71 “**Commissioning Plan**” has the meaning given in Schedule 14 – Outline Commissioning Program.
- 1.72 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Outline Commissioning Program;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the Plant, equipment or Equipment; and

Thunder Bay Correctional Complex Project

- (d) required to be included in the Final Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Consultant or the Contracting Authority Representative during its development pursuant to Section 24.2 of the Project Agreement.
- 1.73 “**Compensation Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.74 “**Compensation Event**” has the meaning given in Section 38.1(a) of the Project Agreement.
- 1.75 “**Completion Holdback**” has the meaning given in Section 24.8(b) of the Project Agreement.
- 1.76 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.77 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, or altered;
 - (b) large penetrations are being created through slabs;
 - (c) the Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
 - (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.
- 1.78 “**Confidant**” has the meaning given in Section 49.6(a)(i) of the Project Agreement.
- 1.79 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.80 “**Construction Act**” means the *Construction Act*, R.S.O. 1990, c.C.30 and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in Section 87.3 of the *Construction Act*.
- 1.81 “**Construction Contract**” means the design-build agreement between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.82 “**Construction Contractor**” means [REDACTED], engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.83 “**Construction Contractor’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5-1 – Construction Contractor’s Direct Agreement.
- 1.84 “**Construction Document Submittals**” has the meaning given in Section 18.3(c)(iii) of the Project Agreement.
- 1.85 “**Construction Guarantor**” means [REDACTED].
- 1.86 “**Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.87 “**Construction Period Payment Application**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.88 “**Construction Quality Plan**” means such document included in Schedule 11A – Design Quality Plan and Construction Quality Plan.
- 1.89 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.90 “**Continuity of Operations Plan**” or “**COOP**” means an emergency response plan prepared by Contracting Authority that describes actions to be taken in the event of an Emergency at the Facility and the continuity and recovery strategies used to maintain essential services in any extended Emergency or disruption.
- 1.91 “**Contract Day**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.92 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.93 “**Contract Year**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.94 “**Contracting Authority**” has the meaning given in the preamble to the Project Agreement.
- 1.95 “**Contracting Authority Commissioning**” means the commissioning activities to be carried out by any one or more of Contracting Authority, SolGen and/or other Province Persons in accordance with the Final Commissioning Program.
- 1.96 “**Contracting Authority Commissioning Consultant**” means the representative of the Design Conformance Consultant appointed by Contracting Authority as its commissioning consultant.
- 1.97 “**Contracting Authority Commissioning Period**” means the period during which any one or more of Contracting Authority, SolGen and/or other Province Persons, are performing the Contracting Authority Commissioning.
- 1.98 “**Contracting Authority Commissioning Tests**” means all commissioning tests required to be performed by any one or more of Contracting Authority, SolGen and/or other Province Persons, pursuant to the Final Commissioning Program.

- 1.99 “**Contracting Authority Contamination**” has the meaning given in Section 16.2(c) of the Project Agreement.
- 1.100 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.101 “**Contracting Authority Design Team**” means any of Contracting Authority, SolGen, their agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Site, the Facility, the Contracting Authority FM Services and/or the other Correctional Complex Activities on behalf of Contracting Authority and SolGen, which, for greater certainty, includes the Design Conformance Consultant but excludes Project Co and any Project Co Party.
- 1.102 “**Contracting Authority Event of Default**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.103 “**Contracting Authority FM Services**” has the meaning given in Section 2.0(q) of Part IV of Schedule 15 – Output Specifications.
- 1.104 “**Contracting Authority Items of Interest or Value**” has the meaning given in Section 16.3(b) of the Project Agreement.
- 1.105 “**Contracting Authority Other Site Condition**” has the meaning given in Section 16.5(b) of the Project Agreement.
- 1.106 “**Contracting Authority Party**” means SolGen and any of Contracting Authority’s and SolGen’s respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the Correctional Complex Activities, but excluding Project Co and any Project Co Party, and “**Contracting Authority Parties**” shall be construed accordingly.
- 1.107 “**Contracting Authority Permits, Licences, Approvals and Agreements**” means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations (including Development Approvals) which are the responsibility of Contracting Authority to obtain as set out in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation, but, for greater certainty, shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation but required by the terms of any such item set out in such Appendix.
- 1.108 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on or prior to the date of Financial Close and any permitted replacement.
- 1.109 “**Contracting Authority Review Period**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.110 “**Contracting Authority Security Deposits**” means any and all letters of credit, securities, prepaid fees, deposits and similar instruments paid or posted by, or on behalf of, Contracting Authority in connection with the Project Operations including, but not limited to, those instruments listed in

Appendix 3 – Contracting Authority Security Deposits of this Schedule 1 – Definitions and Interpretation.

- 1.111 “**Contracting Authority Species-at-Risk**” has the meaning given in Section 16.4(b) of the Project Agreement.
- 1.112 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 32 of the Project Agreement.
- 1.113 “**Contracting Authority Trade-Marks**” means any and all Trade-Marks used by Contracting Authority in any manner whatsoever.
- 1.114 “**Contracting Authority Work**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.115 “**Contractor Site Specific Safety Manual**” means the document describing the Construction Contractor’s health and safety management program for the Project and the Site during the Works, all in accordance with the minimum requirements set out in Schedule 29 – Contractor Site Specific Safety Manual Requirements.
- 1.116 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in Project Co, [REDACTED]; and
 - (b) [REDACTED].
- 1.117 “**COR Certification**” means, in respect of a person, receipt by such person of its Certificate of Recognition and Letter of Good Standing.
- 1.118 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 9.9(a)(ii) of the Project Agreement.
- 1.119 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by Contracting Authority.
- 1.120 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor; or
 - (b) where the Construction Contractor is a joint venture, each member of the joint venture, or
 - (c) where the Construction Contractor is a partnership, each partner of the partnership,
- provided that each such person has current ISO 45001 Accreditation in good standing.
- 1.121 “**Correctional Complex Activities**” means the correctional and detention centre management services, related services and the facilities management services directly or indirectly provided or

Thunder Bay Correctional Complex Project

performed by, for or on behalf of Contracting Authority or any Contracting Authority Party at the Facility and/or the Existing Facilities from time to time, including as described in the Output Specifications, and includes the Contracting Authority FM Services but excludes the Project Operations.

- 1.122 “**Correctional Facility Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the provision or operation of correctional facility premises.
- 1.123 “**Correctional Services Functionality**” means the ability of the Facility to enable Contracting Authority, SolGen and other Province Persons to carry out all of the Correctional Complex Activities in a safe, secure and efficient manner and in particular achieving a balance between circulation, proximity, appropriate room adjacencies and the security requirements of a correctional facility in accordance with the requirements of the Output Specifications.
- 1.124 “**Correctional Services Functionality Report**” has the meaning given in Section 18.6(b) of the Project Agreement.
- 1.125 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.126 “**COVID-19 Change in Law Reference Date**” means [REDACTED].
- 1.127 “**COVID-19 Emergency Public Health Physical Distancing Requirements**” means the requirements under the applicable regulations and orders made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c.17 in effect as of the COVID-19 Change in Law Reference Date or any substantially similar Applicable Law with respect to COVID-19 regarding physical distancing requirements of at least two metres.
- 1.128 “**CPI**” means CPI-XFET for Canada, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, most closely resembles such index.
- 1.129 “**CPIC**” means the Canadian Police Information Center.
- 1.130 “**CPIIn**” has the meaning given in Section 4.1 of Part B of Schedule 20 of the Project Agreement.
- 1.131 “**CPIo**” has the meaning given in Section 4.1 of Part B of Schedule 20 of the Project Agreement.
- 1.132 “**Credit Agreement**” means the credit agreement between, among others, Project Co, as borrower, [REDACTED], dated on or about the date of the Project Agreement, as such agreement may be amended, restated, supplemented or modified from time to time.
- 1.133 “**Critical Non-Conformance**” means any Non-Conformance, or combination of Major Non-Conformances, that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
 - (b) is persistent, ongoing or repeated; or

- (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
- (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to traffic flow;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Correctional Complex Activities;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any person at any part of or the whole of the Facility and/or the Existing Facilities, including any Province Person, Inmate, Visitor or other person;
 - (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
 - (v) materially adversely affect the ability of any Contracting Authority Party to perform their activities as permitted or contemplated by the Project Agreement;
 - (vi) materially adversely affect or change the critical path of the Project as defined in the Current Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works, or cause any delay in achieving Substantial Completion; or
 - (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Province Person or the nature of the Province’s correctional system so as to negatively affect public perception of that system or undertaking.
- 1.134 “**Crown**” means Her Majesty the Queen in Right of Ontario.
- 1.135 “**CSA Standard**” means, at the applicable time, the Canadian Standards Association standards.
- 1.136 “**CSIS**” means the Canadian Security Intelligence Service.
- 1.137 “**Current Progress Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.138 “**Current Replacement Cost**” means the index-linked “Total Capital Cost” of \$[REDACTED] in 2022 dollars set out in the Financial Model).
- 1.139 “**Custodian**” means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.140 “**Custody Agreement**” means the custody agreement between Project Co, Contracting Authority, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 – Custody Agreement.
- 1.141 “**Debt Financing**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.142 “**Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.

Thunder Bay Correctional Complex Project

- 1.143 “**Delay Event**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.144 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.145 “**Demolition Default Event**” has the meaning given in Section 9.10(b) of the Project Agreement.
- 1.146 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.147 “**Demolition Plan**” means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.148 “**Demolition Requirements**” has the meaning given in Section 9.10(a)(iv)(C) of the Project Agreement.
- 1.149 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 9.10(a)(iv)(A) of the Project Agreement.
- 1.150 “**Demolition Supervisor**” has the meaning given in Section 9.10(a)(ii) of the Project Agreement.
- 1.151 “**Design Conformance Consultant**” means a consultant to Contracting Authority to act as an advocate for Contracting Authority and SolGen throughout the design and construction stage of the Project, being, as of the date of the Project Agreement, [REDACTED].
- 1.152 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Project Co relating to the design, construction or testing of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.153 “**Design Development Submittals**” has the meaning given in Section 18.3(c)(i) of the Project Agreement.
- 1.154 “**Design Quality Plan**” means such document included in Schedule 11A – Design Quality Plan and Construction Quality Plan.
- 1.155 “**Design Review Meetings**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.156 “**Design Team**” means [REDACTED].
- 1.157 “**Design Workshops**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.158 “**Designated Project Co Employee**” means each and every person employed, engaged, hired or retained by Project Co or a Project Co Party who is:

Thunder Bay Correctional Complex Project

- (a) to carry out any of the responsibilities of Project Co under the Project Agreement, including any person who is to provide any of the Works or to provide any of the Project Co Services for and on behalf of Project Co or a Project Co Party. Such persons in particular include each and every person employed, engaged or hired by Project Co or a Project Co Party in connection with the construction of the Facility who is involved in the installation, testing or repair of (i) computer, phone or other communications or information technology wiring, cables or equipment; or (ii) security features of the Facility, including all security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras or alarms;
 - (b) identified by name in any proposal submitted by Project Co or a Project Co Party or who is hired in replacement of any person so named; and
 - (c) otherwise designated as a Designated Project Co Employee by Contracting Authority or SolGen from time to time in its sole discretion.
- 1.159 **“Development Approval”** means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements required from time to time in respect of the construction of the Facility.
- 1.160 **“Direct Agreements”** means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement.
- 1.161 **“Direct Cost”** has the meaning given in Schedule 22 -Variation Procedure.
- 1.162 **“Direct Losses”** means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.163 **“Direct or Indirect Power or Control”** means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than [REDACTED] ([REDACTED]%) percent of any of the shares, units or equity interests of a person;
 - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] ([REDACTED]%) percent of the voting securities, units or equity interests of such person; or
 - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.164 **“Discount Rate”** means a rate equal to $((A + B) / C) + D$, where:

A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.

B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.

C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.

D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.

1.165 “**Discrete Annual Energy Targets**” has the meaning given in Schedule 36 – Energy Matters.

1.166 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:

- (a) correctional facilities whose design, construction, financing and facilities management are procured by a contract similar to the Project Agreement and not to other similar correctional facilities;
- (b) the Facility and not to other correctional facilities;
- (c) Project Co and not to other persons; or
- (d) persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to the Project Agreement and not to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
- (g) where such Change in Law affects companies generally.

1.167 “**Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.

1.168 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.

1.169 “**Distribution**” has the meaning given in Schedule 28 – Refinancing.

1.170 “**Document Control and Security Protocol**” has the meaning given in Section 49.5(f) of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.171 “**Draft Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.172 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.173 “**Elevator Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.174 “**Elevator Availability Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.175 “**Emergency**” means any situation, event, occurrence, or multiple occurrences:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and/or safety of any persons (including any Inmates or Visitors) or the safety of any part or the whole of the Facility;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment; or
 - (iii) constitutes a hostage situation or state of emergency declared as such by the Contracting Authority Representative or SolGen (acting reasonably);
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, the Existing Facilities, any part of the Site, the conduct of the Project Operations or the conduct of Correctional Complex Activities; or
 - (v) constitutes a period of transition to or from war;and which, in the opinion of Contracting Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing,
or
 - (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) the police, the armed forces, fire or ambulance services.
- 1.176 “**Emergency Maintenance Work**” is a type of Unscheduled Maintenance Work and is described in Section 26.5(a) of the Project Agreement.
- 1.177 “**Emergency Management Services**” means those emergency management services to be carried out pursuant to Section 3.6 of Part IV of Schedule 15 – Output Specifications.
- 1.178 “**Employee Termination Payments**” has the meaning given in Schedule 23 – Compensation on Termination.

Thunder Bay Correctional Complex Project

- 1.179 “**Enbridge**” means Enbridge Gas Inc. and any of its Affiliates.
- 1.180 “**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.
- 1.181 “**Energy**” has the meaning given in Schedule 36 – Energy Matters.
- 1.182 “**Energy Analysis Report**” has the meaning given in Schedule 36 – Energy Matters.
- 1.183 “**Energy Cost Reimbursement Payment**” has the meaning given in Section 31.2(b) of the Project Agreement.
- 1.184 “**Energy Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.185 “**Energy Target Letter**” has the meaning given in Schedule 36 – Energy Matters.
- 1.186 “**Environmental and Sustainability Services**” means those environmental and sustainability services to be carried out pursuant to Section 3.5 of Part IV of Schedule 15 – Output Specifications.
- 1.187 “**Environmental Reports and Designated Substance Reports**” has the meaning given in Schedule 38 – Reports.
- 1.188 “**Equipment**” means the Not-In-Contract Equipment (including furniture) and the In-Contract Equipment and, for clarity, does not include the SolGen Equipment or Existing Equipment.
- 1.135 “**Equipment Invoice**” has the meaning given in Section 21.10(a) of the Project Agreement.
- 1.136 “**Equipment List**” means the equipment lists set out in Appendix 2 of Part V of Schedule 15 – Output Specifications.
- 1.137 “**Equipment Procurement and Existing Facilities Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.138 “**Equipment Schedule**” has the meaning given in Section 21.8(a) of the Project Agreement.
- 1.139 “**Equipment Steering Committee**” has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.189 “**Equity Capital**” means, at any time, the aggregate (without double counting) of all subscribed share or partnership capital, shareholder or partner loans, loans made or capital contributed to Project Co by any Affiliate of Project Co, any Project Co Party or any Affiliate of a Project Co Party and other contributed capital of Project Co, as set out in the Financial Model at such time, to the extent applied for the purposes of the Project.
- 1.190 [REDACTED]
- 1.191 “**Equity IRR**” has the meaning given in Schedule 28 – Refinancing.
- 1.192 “**Equity Provider**” means [REDACTED].

Thunder Bay Correctional Complex Project

- 1.193 “**Equity Sale Amount**” means the gross amount, without taking into account any transaction costs and fees, received in consideration of a percentage of Equity Capital.
- 1.194 “**Equity Sale IRR**” means the annualized internal rate of return realized by the seller on a sale of any percentage Equity Capital, between the date on which such seller initially invests in or acquires such percentage of Equity Capital, and the date on which the sale of such percentage of Equity Capital occurs. Equity Sale IRR shall be calculated using the XIRR function in Excel, by taking into account the Equity Sale Amount, together with all Distributions received by the seller with respect to such percentage of Equity Capital, and the amount initially paid by the same seller to invest in or acquire the percentage of the Equity Capital in question, as well as the actual timing of payment and/or receipt of all such amounts.
- 1.195 “**Escalation Factor**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.196 “**Escrow Account**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.197 “**Estimate**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.198 “**Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.199 “**Estimated Increased Maintenance Costs**” has the meaning given in Section 26.3(b) of the Project Agreement.
- 1.200 “**Event**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.201 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the Equity Sale Amount; and
 - (b) the Threshold Equity Sale Amount.
- 1.202 “**Excusing Cause**” has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.203 “**Exempt Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.204 “**Exercise Date**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.205 “**Existing COVID-19 Laws Extension**” means the continuation in force of the COVID-19 Emergency Public Health Physical Distancing Requirements beyond the Anticipated COVID-19 Impact End Date.
- 1.206 “**Existing Equipment**” means the equipment, furniture and fixtures listed in the column labelled “Existing Equipment” in the Equipment List.
- 1.207 “**Existing Facilities**” means the existing Thunder Bay Correctional Centre, located at 2435 Highway 61, Thunder Bay, Ontario, and the Thunder Bay Modular Built Facility, located at 2465 Highway 61, Thunder Bay, Ontario, as identified in the Site Requirements, including all site services and utilities to support such facilities.
- 1.208 “**Expiry Date**” means [REDACTED].

Thunder Bay Correctional Complex Project

- 1.209 “**Expiry Lifecycle Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.210 “**Expiry Transition Amount**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.211 “**Expiry Transition Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.212 “**Expiry Transition Procedure**” means the procedure for Expiry Transition described in Schedule 24 – Expiry Transition Procedure.
- 1.213 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.214 “**Expiry Transition Security**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.215 “**Expiry Transition Works**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.216 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.217 “**Facilities Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.218 “**Facility**” means:
- (a) all buildings, facilities and other structures;
 - (b) the Plant;
 - (c) all site services, utilities, roadways and parking areas required to support such buildings, facilities and structures;
 - (d) all supporting systems, infrastructure and improvements; and
 - (e) all other works, improvements, and demolitions to occur on the Site,
 - (f) in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.
- 1.219 “**Facility Condition Report**” has the meaning given in Part IV of Schedule 15 – Output Specifications.
- 1.220 “**Facility Technical Review**” has the meaning given in Part IV of Schedule 15 – Output Specifications.
- 1.221 “**Facility Volunteers**” means persons volunteering at the Facility or the Existing Facilities, as authorized by SolGen.

Thunder Bay Correctional Complex Project

- 1.222 “**Failure Event**” means a Quality Failure, an Availability Failure, an Energy Failure or a Service Failure.
- 1.223 “**Failure Points**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.224 “**Failure Type**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.225 “**Final Commissioning Program**” means the program to be jointly developed and agreed by Contracting Authority, SolGen and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.226 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including the completion of all Minor Deficiencies and Seasonal Works.
- 1.227 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.12(d) of the Project Agreement.
- 1.228 “**Final Completion Countdown Notice**” means the notice to be delivered by Project Co in accordance with Section 24.11(a) of the Project Agreement.
- 1.229 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.230 “**Final Completion Notice**” has the meaning given in Section 24.12(b) of the Project Agreement.
- 1.231 “**Final Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.232 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.233 “**Financial Close Target Date**” means April 22, 2022, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.234 “**Financial Model**” means, at any time, the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model. If “Financial Model” is used without any reference to a particular time, it means the Financial Model at or as at the time the applicable calculation is being made.
- 1.235 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations save and except for the Contracting Authority Security Deposits.
- 1.236 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.237 “**Five Year Maintenance Plan**” has the meaning given in Part IV of Schedule 15 – Output Specifications

Thunder Bay Correctional Complex Project

- 1.238 “**FM Help Desk**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.239 “**FM Help Desk Services**” means those help desk services to be carried out pursuant to Section 3.3 of Part IV of Schedule 15 – Output Specifications.
- 1.240 “**Food Services**” means those food services to be carried out pursuant to Section 3.13 of Part IV of Schedule 15 – Output Specifications.
- 1.241 “**Force Majeure**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.242 “**Functional Area**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.243 “**Functional Part**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.244 “**Functional Unit**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.245 “**Gainshare Adjustment**” has the meaning given in Schedule 36 – Energy Matters.
- 1.246 “**General Management Services**” means those general management services to be carried out pursuant to Section 3.2 of Part IV of Schedule 15 – Output Specifications.
- 1.247 “**Geotechnical Reports**” has the meaning given in Schedule 38 – Reports.
- 1.248 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.249 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority, any aspect of the performance of the Project Agreement or the operation of the Facility, the Existing Facilities or the Correctional Complex Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.250 “**Government Sensitive Information**” means any information which is designated as such by the Province from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, (ii) all information that relates to the security systems of the Facility and of correctional facilities in Ontario generally, (iii) any record, the disclosure of which could be injurious to the interests of the Province; and (iv) any information that discloses the identity or whereabouts of a police informant or undercover officer.
- 1.251 “**Grounds**” means all external elements of the Facility.
- 1.252 “**H&S Certification Default Event**” has the meaning given in Section 9.9(b) of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.253 “**H&S Certification Maintenance Plan**” has the meaning given in Section 9.9(b)(vii)(B) of the Project Agreement.
- 1.254 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 9.9(b)(vi)(B) of the Project Agreement.
- 1.255 “**H&S Construction Inspection**” has the meaning given in Section 13.1(i) of the Project Agreement.
- 1.256 “**H&S Construction Inspection Report**” has the meaning given in Section 13.1(k) of the Project Agreement.
- 1.257 “**H&S Construction Re-Inspection**” has the meaning given in Section 13.1(l)(ii) of the Project Agreement.
- 1.258 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 13.1(l)(iii) of the Project Agreement.
- 1.259 “**H&S Conviction**” has the meaning given in Section 42.1(a)(xx) of the Project Agreement.
- 1.260 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.261 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.262 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.263 “**Heritage Guidelines and Protocols**” means those heritage guidelines and protocols mandated by Applicable Laws.
- 1.264 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.265 “**HVAC**” means heating, ventilation and air conditioning.
- 1.266 “**IC Construction Period Payment Authorization Certificate**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.267 “**IC Construction Period Payment Confirmation Certificate**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.268 “**IC Initial Capital Investment Certificate**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.269 “**IC’s Representatives**” has the meaning given in Section 23.8(a) of the Project Agreement.
- 1.270 “**IC Substantial Completion Deliverables Confirmation**” has the meaning given in Section 24.4(c)(i) of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.271 “**IC Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 24.4(c)(ii) of the Project Agreement.
- 1.272 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.273 “**Improvements**” means structures, buildings, installations, fixtures, services and other such improvements.
- 1.274 “**In-Contract Equipment**” means the equipment, fixtures and furniture listed in the column labelled “In-Contract Equipment” in the Equipment List, and for clarity, does not include any Not-In-Contract Equipment, SolGen Equipment or Existing Equipment. For greater clarity, Project Co’s obligations in respect of In-Contract Equipment shall constitute part of the Project Operations.
- 1.275 “**Indemnifiable Taxes**” has the meaning given in Section 32.6(b) of the Project Agreement.
- 1.276 “**Indemnifier**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.277 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.278 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Contracting Authority and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.279 “**Independent Inspector**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.280 “**Indirect Losses**” has the meaning given in Section 54.1(a) of the Project Agreement.
- 1.281 “**Initial APAP Due Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.282 “**Initial Capital Investment Amount**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.283 “**Initial Capital Investment Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.284 “**Initial Capital Investment Date Notice**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.285 “**Initial Labour Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.286 “**Inmates**” means persons under the supervision, care and custody of SolGen at the Facility or the Existing Facilities.
- 1.287 “**Inmate Visitors**” means persons visiting Inmates at the Facility or the Existing Facilities, as authorized by SolGen.

Thunder Bay Correctional Complex Project

- 1.288 “**Innovation Proposal**” has the meaning given in Section 36.2(b) of the Project Agreement.
- 1.289 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.290 “**Insurance Cost Differential**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.291 “**Insurance Review Date**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.292 “**Insurance Review Period**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.293 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Contracting Authority, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 – Insurance Trust Agreement.
- 1.294 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.295 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) the Project Co Services, including the operation, maintenance, improvement and testing of the Facility;
 - (c) any other Project Operations; or
 - (d) the Project Agreement.
- 1.296 “**Interim Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.297 “**Investment Canada Act**” means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time.

Thunder Bay Correctional Complex Project

- 1.298 “**Invoice Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.299 “**IO**” or “**Infrastructure Ontario**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto or persons exercising delegated power and the Minister’s authority, as agent for Her Majesty the Queen in Right of Ontario, as represented by MGCS.
- 1.300 “**IPFP Framework**” has the meaning given in the recitals to the Project Agreement.
- 1.301 “**Irrecoverable Tax**” has the meaning given in Section 32.3(b) of the Project Agreement.
- 1.302 “**ISO 45001**” means the international standard that specifies requirements for an occupational health and safety management system developed by the International Organization of Standardization.
- 1.303 “**ISO 45001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of ISO 45001.
- 1.304 “**Issuing Authority**” means any “Issuing Authority” identified in Appendix 2 – Listed Project Co PLAAs to this Schedule 1 – Definitions and Interpretation.
- 1.305 “**Items of Interest or Value**” has the meaning given in Section 16.3(a) of the Project Agreement.
- 1.306 “**Jointly Developed Materials**” has the meaning given in Section 48.4(a) of the Project Agreement.
- 1.307 “**Junior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- 1.308 “**Junior Debt Makewhole**” means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “makewhole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- 1.309 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.310 “**Junior Lenders**” means NIL. For greater clarity, Junior Lenders shall not include:
- (a) the Hedge Providers and their respective permitted successors and assigns; and
 - (b) any Affiliate of Project Co, any Project Co Party, or any Affiliate of a Project Co Party.

Thunder Bay Correctional Complex Project

- 1.311 “**Key Works Milestone**” has the meaning given in Schedule 12 - Works Scheduling Requirements.
- 1.312 “**Lands**” has the meaning given in Schedule 35 – Site.
- 1.313 “**LD Commencement Date**” has the meaning given in Section 54A(a) of the Project Agreement.
- 1.314 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.315 “**LEED BD+C Rating System**” means the CaGBC’s Leadership in Energy and Environmental Design for Building Design and Construction (BD+C) v4 with Addenda.
- 1.316 “**LEED BD+C Silver Rating**” means the achievement of a “Silver” rating from the CaGBC with respect to the CaGBC’s Leadership in Energy and Environmental Design for Building Design and Construction (BD+C) v4 with Addenda and any applicable LEED Interpretations or Credit Rulings.
- 1.317 “**LEED Mandatory and Prerequisites Credits**” has the meaning given in Section 22.1(a) of the Project Agreement.
- 1.318 “**LEED Proposed Building Energy Model**” has the meaning given in Schedule 36 – Energy Matters.
- 1.319 “**Lenders**” means all or any of the persons acting at all times at arm’s length to Project Co and each Project Co Party who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including, without limitation, the Senior Lenders and the Junior Lenders and, where the context so permits, prospective financiers or lenders, and for greater clarity, excludes any Affiliate of Project Co or of a Project Co Party.
- 1.320 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.321 “**Lenders’ Consultant**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.322 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Contracting Authority, the Lenders’ Agent and Project Co in the form set out in Schedule 4 – Lenders’ Direct Agreement.
- 1.323 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates with Senior Lenders or Junior Lenders relating to the financing of the Project Operations, including, for greater certainty, the Credit Agreement, Security Documents, any Hedging Agreements and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to (i) any change to the financing terms or conditions of any investment instrument related to the financing of the Project Operations, or (ii) the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations. Without limitation, Lending Agreements include any agreements or instruments described above with any of the Lenders and includes those related to any Refinancing.
- 1.324 “**Letter of Credit Provider**” has the meaning given in the Request for Proposals.
- 1.325 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by ISHA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.

- 1.326 “**Lifecycle Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.327 “**Lifecycle Replacement and Refurbishment Services**” means those lifecycle replacement and refurbishment services to be carried out pursuant to Section 2.5 of Part IV of Schedule 15 – Output Specifications.
- 1.328 “**Lifecycle Replacement & Refurbishment Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.329 “**Lifecycle Replacement Schedule**” means a program, updated or amended from time to time as required by the Project Agreement and as agreed to by Contracting Authority, for the planned or scheduled replacement, refreshment or refurbishment of the elements of the Facility for which Project Co is required to provide Lifecycle Replacement and Refurbishment Services that have reached the end of their useful service life during the Project Term, as set out in Appendix A to Schedule 24 – Expiry Transition Procedure (including, but not limited to, all elements of the Facility and all In-Contract Equipment but excluding such elements of the Facility, including Not-In-Contract Equipment, SolGen Equipment and Existing Equipment that Contracting Authority is responsible for replacing, refreshing or refurbishing pursuant to the Project Agreement).
- 1.330 “**Liquid Market**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.331 “**Liquidated Damages**” means the liquidated damages to be paid pursuant to Section 54A of the Project Agreement, which shall be in the amount of \$[REDACTED] per Business Day.
- 1.332 “**Listed Project Co PLAA**” means each of the Project Co Permits, Licences, Approvals and Agreements identified in Appendix 2 – Listed Project Co PLAAs to this Schedule 1 – Definitions and Interpretation.
- 1.333 “**Listed Project Co PLAA Deadline**” has the meaning given in Section 9.4A(a) of the Project Agreement.
- 1.334 “**Listed Project Co PLAA Requirements**” means any requirements, policies, guidelines or rules of the applicable Issuing Authority in respect of the applicable Listed Project Co PLAA that are included in or consistent with Applicable Law.
- 1.335 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.336 “**Longstop Date**” has the meaning given in Section 42.1(a)(ii) of the Project Agreement.
- 1.337 “**Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.338 “**Maintenance Activities**” has the meaning given in Part IV of Schedule 15 – Output Specifications.
- 1.339 “**Maintenance Work**” means any work performed or required to be performed after Substantial Completion for maintenance or repair of the Facility in accordance with the requirements of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.340 “**Major Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of this Project Agreement; or
 - (b) the continued existence of which is reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion.
- 1.341 “**Major Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.342 “**Major Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.343 “**Major Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.344 “**Major Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.345 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, replacing or performing filling operation on (a) the Works or the Existing Facilities as required under the Project Agreement or (b) any existing components disturbed or damaged due to the Works, to at least the condition existing immediately prior to the disturbance or damage occurring, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.346 “**Management of Hazardous Substances, Waste & Recycling Services**” means those waste management and recycling services to be carried out pursuant to Section 3.9 of Part IV of Schedule 15 - Output Specifications.
- 1.347 “**Mandatory Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.348 “**Market Value Availability Deduction Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.349 “**Master Equipment List**” has the meaning given in Section 21.4(a)(i)(A) of the Project Agreement.
- 1.350 “**Maximum Eligible Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.351 “**Maximum Service Payment**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.352 “**Medical Contamination**” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and the Project Agreement cannot substantially prevent or cannot substantially remove with the result that:
- (a) it is unsafe to admit persons to the relevant area in the Facility or to use the area for the purpose for which it is intended; and

- (b) the area in the Facility cannot be made safe for the admission of persons.
- 1.353 “**Medium Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.354 “**Medium Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.355 “**Medium Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.356 “**Medium Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.357 “**Member**” has the meaning given in Schedule 27 – Dispute Resolution.
- 1.358 “**MGCS**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Government and Consumer Services, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.359 “**Minimum Agreed Availability Conditions**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.360 “**Minimum Unavailability Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.361 “**Mini-Perm Financing**” has the meaning given in Schedule 28 – Refinancing.
- 1.362 “**Minor Deficiencies**” means any defects and deficiencies:
- (a) arising from or related to the Works required to achieve Substantial Completion under the Project Agreement; and
 - (b) that, neither individually nor collectively, would
 - (i) materially impair (A) Contracting Authority’s use and enjoyment of the Facility (including the Contracting Authority Commissioning), or (B) the performance of the Correctional Complex Activities;
 - (ii) materially impair the performance of the Project Co Services by Project Co;
 - (iii) impair the health, safety or security of any person at or in any part of the Facility; or
 - (iv) delay or prevent the completion of the Transition.
- For the purpose of the Project Agreement, any defect or deficiency located inside the security perimeters of the Facility that, notwithstanding the foregoing, compromise any safety, security or emergency response capability of Contracting Authority or any Province Person, shall be deemed not to be a Minor Deficiency.
- 1.363 “**Minor Deficiencies Certification Date**” has the meaning given in Section 24.10(d) of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.364 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a)(i) of the Project Agreement.
- 1.365 “**Minor Deficiency Completion Period**” means the period of time described in Section 24.9(a)(i) of the Project Agreement within which Project Co is required to complete and rectify a Minor Deficiency.
- 1.366 “**Minor Non-Conformance**” means any Non-Conformance that:
- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
 - (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.
- 1.367 “**Minor Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.368 “**Minor Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.369 “**Minor Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.370 “**Minor Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.371 “**Monitoring Notice**” has the meaning given in Section 29.4(a) of the Project Agreement.
- 1.372 “**Monitoring Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.373 “**Monthly Energy Report**” has the meaning given in Schedule 36 – Energy Matters.
- 1.374 “**Monthly Equipment Payment**” has the meaning given in Section 21.10(a) of the Project Agreement.
- 1.375 “**Monthly Equipment Payment Estimate**” has the meaning given in Section 21.10(b) of the Project Agreement.
- 1.376 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.377 “**MSDS**” means the material safety data sheets prescribed by the applicable WHMIS legislation.
- 1.378 “**New Agreement**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.379 “**New Project Co**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.380 “**NIC Equipment Procurement Documentation**” has the meaning given in Section 21.4(a)(ii)(B)(II) of the Project Agreement.
- 1.381 “**NIC Equipment Procurement Recommendation**” has the meaning given in Section 21.4(a)(ii)(B)(VIII) of the Project Agreement.
- 1.382 “**No Default Payment Compensation Amount**” means [REDACTED].

Thunder Bay Correctional Complex Project

- 1.383 “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works or Project Co Services and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in this Project Agreement.
- 1.384 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.385 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.386 “**Normal Wear and Tear**” means wear and tear that is reasonable given the use and age of the Facility (including all of the elements thereof) and consistent with wear and tear that could reasonably be expected to exist at a similar facility, operating in a similar environment and similar circumstances but not including any degradation in the functionality or operability of the Facility that, subject to the exceptions specified in Section 2.2 of Schedule 24 – Expiry Transition Procedure, will result in the Facility failing to meet the Output Specifications or failing to comply with Applicable Law.
- 1.387 “**Not-In-Contract Equipment**” means the equipment, furniture and fixtures designated in the column labelled “Not-In-Contract Equipment” in the Equipment List, and for clarity does not include any In-Contract Equipment, SolGen Equipment or Existing Equipment.
- 1.388 “**Notice**” has the meaning given in Section 58.1(a) of the Project Agreement
- 1.389 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.390 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facility as a correctional facility in compliance with Applicable Law.
- 1.391 “**OCPM**” has the meaning given in Section 20.6(b) of the Project Agreement.
- 1.392 “**Open Data Directive**” means the Management Board of Cabinet’s Open Data Directive dated April 29, 2016, as may be amended from time to time.
- 1.393 “**Operational Start-Up Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.394 “**Operational Term**” means the period from the Substantial Completion Date until the end of the Project Term.
- 1.395 “**Operations Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.396 “**Other Site Condition**” means any Site Condition found below but not on the surface of the Site, save and except for any:
- (a) Contamination;
 - (b) Items of Interest or Value;
 - (c) Species-at-Risk; and

Thunder Bay Correctional Complex Project

- (d) structure, installation, fixture, service, works, building or other improvement visible from the surface of the Site, including the below-grade portion of the Existing Facilities.
- 1.397 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 – Outline Commissioning Program.
- 1.398 “**Outline Commissioning Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.399 “**Output Specifications**” means Schedule 15 – Output Specifications of the Project Agreement.
- 1.400 “**Painshare Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.401 “**Pandemic and Epidemic Change in Law**” means any Change in Law that:
- (a) came into effect after the COVID-19 Change in Law Reference Date, including any changes to the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (b) is directly the result of and is directly related to the occurrence, increase or decrease in severity, or ending of a pandemic (including COVID-19) or epidemic;
 - (c) directly affects (i) the performance of the Works or the Project Co Services, as applicable, or (ii) the cost to Project Co of performing the Works or the Project Co Services, applicable; and
 - (d) is not a Works Change in Law or a Relevant Change in Law.

For the purposes of this Project Agreement, this definition shall:

- (A) include:
 - (1) any new, amendment or other modification to or repeal or replacement of any Applicable Law that satisfies the foregoing requirements of Sections (a) to (d) (inclusive); and
 - (2) any Existing COVID-19 Laws Extension from and after the Anticipated COVID-19 Impact End Date; and
 - (B) apply only to a Change in Law in respect of Applicable Laws in the Province of Ontario and the laws of Canada applicable therein that satisfies such requirements.
- 1.402 “**Pandemic and Epidemic Change in Law Compensation**” has the meaning given in Section 35.4(a) of the Project Agreement.
- 1.403 “**Pandemic and Epidemic Response and Mitigation Plan**” means the pandemic and epidemic response and mitigation plan included in the Project Co Proposal Extracts.
- 1.404 “**Pandemic and Epidemic Supply Chain Delay**” means a delay in the performance of the Works or the Project Co Services directly arising from a delay in the delivery of material or supplies in support of the Works or the Project Co Services, as applicable, to the extent such delay in delivery:

Thunder Bay Correctional Complex Project

- (a) directly results from the occurrence of:
 - (i) a pandemic or epidemic other than the COVID-19 pandemic; or
 - (ii) a material increase in the spread of COVID-19 after the COVID-19 Change in Law Reference Date,

which directly and adversely affects the delivery of such materials or supplies by a Supplier or Subcontractor; and
 - (b) prevents, delays or otherwise interferes with the performance of the Works or the Project Co Services, as applicable.
- 1.405 “**PAR Meeting**” has the meaning given in Section 11.6(f) of the Project Agreement.
- 1.406 “**Parking Services**” means those parking services to be carried out pursuant Section 3.11 of Part IV of Schedule 15 – Output Specifications.
- 1.407 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means both Contracting Authority and Project Co, but, for greater certainty, such definitions do not include SolGen.
- 1.408 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 – Dispute Resolution Procedure.
- 1.409 “**Payment Adjustment Report**” has the meaning given in Section 31.6(i)(ii) of the Project Agreement.
- 1.410 “**Payment Calculation Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.411 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.412 “**Payment Commencement Date**” means the date that is 2 Business Days after the Substantial Completion Date.
- 1.413 “**Payment Compensation Amount**” means [REDACTED].
- 1.414 “**Payment Mechanism**” means Schedule 20 – Payment Mechanism.
- 1.415 “**Payment Mechanism Technical Review**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.416 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by Contracting Authority for each Contract Year, provided that the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.417 “**Performance Audit**” has the meaning given in Section 26.8(a) of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.418 “**Performance Guarantees**” means the guarantees to Project Co in respect of the Construction Contract and the Service Contract provided by the Construction Guarantor and the Service Guarantor, respectively.
- 1.419 “**Performance Indicators**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.420 “**Performance Monitoring**” means those performance monitoring services to be carried out pursuant to Section 3.2.3(c) of Part IV of Schedule 15 – Output Specifications.
- 1.421 “**Performance Monitoring Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.422 “**Performance Monitoring Program**” has the meaning given in Part IV of Schedule 15 – Output Specifications.
- 1.423 “**Performance Monitoring Report**” means the report specified in Section 3.2.3 of Part IV of Schedule 15 – Output Specifications prepared by Project Co in respect of its performance of the Project Co Services during the previous Contract Month.
- 1.424 “**Performance Requirements**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.425 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.426 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.427 “**Periodic Labour Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.428 “**Permanent Repair**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.429 “**Permanent Repair Deadline**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.430 “**Permits, Licences, Approvals and Agreements**” means the Contracting Authority Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.431 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
 - (b) any additional financing approved by Contracting Authority in accordance with Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase Contracting Authority’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.432 “**Personal Information**” means all personal information (as the term “**personal information**” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or a Project Co Party other than personal information of the employees of Project Co or a Project Co Party and other than personal information that is wholly

Thunder Bay Correctional Complex Project

- unrelated to the Project Operations and not derived directly or indirectly from Contracting Authority in respect of the Project.
- 1.433 “**Pest Control Services**” means those pest control services to be carried out pursuant to Section 3.10 of Part IV of Schedule 15 – Output Specifications.
- 1.434 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of Contracting Authority as defined in Schedule 15 – Output Specifications.
- 1.435 “**Plant Services**” means those plant services to be carried out pursuant to Section 2.4 of Part IV of Schedule 15 – Output Specifications.
- 1.436 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the TBPS and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.437 “**Post Termination Service Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.438 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Site as set out in the Environmental Reports and Designated Substance Reports.
- 1.439 “**Private Capital Advance Confirmations**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.440 “**Private Capital Funding Confirmations**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.441 “**Private Capital Invested**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.442 “**Proceeding at Risk Matter**” has the meaning given in Section 11.6(a)(ii) of the Project Agreement.
- 1.443 “**Proceeding at Risk Notice**” has the meaning given in Section 11.6(a) of the Project Agreement.
- 1.444 “**Product**” means or “**Products**” mean material, machinery, equipment and fixtures forming the Works but does not include Equipment, SolGen Equipment or Existing Equipment or machinery and equipment used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.445 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.446 “**Prohibited Act**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.447 “**Project**” has the meaning given in Recital B of the Project Agreement.
- 1.448 “**Project Agreement**” has the meaning given in Recital C of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.449 “**Project Agreement Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.450 “**Project Co**” means EllisDon Infrastructure TBCC General Partnership.
- 1.451 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.452 “**Project Co Commissioning Coordinator**” means the person appointed by Project Co as its commissioning agent.
- 1.453 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.454 “**Project Co Contamination**” has the meaning given in Section 16.2(a) of the Project Agreement.
- 1.455 “**Project Co Event of Default**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.456 “**Project Co Group**” means Project Co and [REDACTED] together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co or [REDACTED].
- 1.457 “**Project Co Items of Interest or Value**” has the meaning given in Section 16.3(b) of the Project Agreement.
- 1.458 “**Project Co Other Site Condition**” has the meaning given in Section 16.5(a) of the Project Agreement.
- 1.459 [REDACTED]
- 1.460 [REDACTED]
- 1.461 “**Project Co Party**” means:
- (a) the Construction Contractor;
 - (b) the Service Provider;
 - (c) any person engaged by Project Co, the Construction Contractor, and/or the Service Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
 - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.462 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained and/or performed by Project Co in accordance with the Project Agreement and as required by Applicable

Law, and all necessary permissions, consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including all Development Approvals and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, including the Listed Project Co PLAAs and all other permits, licences, approvals and agreements which are the responsibility of Project Co to obtain and/or perform as set out in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation but other than any Contracting Authority Permits, Licences, Approvals and Agreements.

- 1.463 **“Project Co Proposal Extracts”** has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.464 **“Project Co Representative”** means the person designated as such by Project Co on or prior to the date of Financial Close and any permitted replacement.
- 1.465 **“Project Co Services”** means the services to be performed by Project Co during and related to Operational Term, including those described in Part IV of Schedule 15 – Output Specifications, as such services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Correctional Complex Activities.
- 1.466 **“Project Co Site Inspections”** has the meaning given in Section 14.9(a) of the Project Agreement.
- 1.467 **“Project Co Species-at-Risk”** has the meaning given in Section 16.4(a) of the Project Agreement.
- 1.468 **“Project Co Staff”** means any and all persons who are employed or engaged by Project Co or any Project Co Party to work at or in relation to the Facility during the Project Term.
- 1.469 **“Project Co Variation Notice”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.470 **“Project Data”** means:
- (a) all Design Data;
 - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Co Services; and
 - (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement,
- other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.471 **“Project Documents”** means the Ancillary Documents and the Lending Agreements.
- 1.472 **“Project Insurance Change”** has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.473 **“Project Manager Knowledge”** means knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in

Thunder Bay Correctional Complex Project

response to the Request for Proposals, but does not include any knowledge obtained as a result of the review of Background Information pursuant to Section 6.1 of the Project Agreement.

1.474 **“Project Operations”** means:

- (a) the performance of the Works;
- (b) the delivery of the Project Co Services; and
- (c) the performance of all other obligations of Project Co under the Project Agreement.

1.475 **“Project Schedules”** has the meaning given in Schedule 12 – Works Scheduling Requirements.

1.476 **“Project Term”** means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.

1.477 **“Projected Construction Period Payment”** has the meaning given in Schedule 19 – Construction Period Payments.

1.478 **“Projected Cumulative Construction Period Payment”** has the meaning given in Schedule 19 – Construction Period Payments.

1.479 **“Proposal Fee”** has the meaning given in the Request for Proposals.

1.480 **“Proposal Part”** means a part of Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission agreed upon by Contracting Authority and Project Co as part of the RFP process.

1.481 **“Proposed Works Schedule”** has the meaning given in Schedule 12 – Works Scheduling Requirements.

1.482 **“Proprietor”** has the meaning given in Section 49.6(a) of the Project Agreement.

1.483 **“Protesters”** has the meaning given in Section 9.7(a) of the Project Agreement.

1.484 **“Province”** means Her Majesty the Queen in Right of Ontario.

1.485 **“Province Person Third Party Beneficiaries”** has the meaning given in Section 61.17(a) of the Project Agreement.

1.486 **“Province Persons”** means the Contracting Authority Parties, IO, MGCS, and, while attending in their official capacity at the Facility, the Site or the Existing Facilities, the following:

- (a) any entity to which authority is designated pursuant to Section 60.1 of the Project Agreement and any agents and employees of any such entity; and
- (b) contractors of any entity to which authority is delegated pursuant to Section 60.1 of the Project Agreement and subcontractors of any tier and its or their directors, officers and employees;

but excluding Project Co and any Project Co Party.

- 1.487 “**Qualification Criteria**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.488 “**Qualifying Bank**” has the meaning in Schedule 28 – Refinancing.
- 1.489 “**Qualifying Bank Transaction**” has the meaning in Schedule 28 – Refinancing.
- 1.490 “**Qualifying Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.491 “**Qualifying Tender**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.492 “**Qualifying Tenderer**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.493 “**Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.494 “**Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.495 “**Quality Plans**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.496 “**Recoverable Tax**” has the meaning given in Section 32.3(c) of the Project Agreement.
- 1.497 “**Recovery Amount**” has the meaning given in Section 53.3(g) of the Project Agreement.
- 1.498 “**Recovery Schedule**” has the meaning given in Section 20.4(a)(iv)(A) of the Project Agreement.
- 1.499 “**Recovery Schedule Report**” has the meaning given in Section 20.4(a)(iv)(C) of the Project Agreement.
- 1.500 “**Rectification**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.501 “**Rectification Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.502 “**Rectification Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.503 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.504 “**Refinancing Financial Model**” has the meaning given in Schedule 28 – Refinancing.
- 1.505 “**Refinancing Gain**” has the meaning given in Schedule 28 – Refinancing.
- 1.506 “**Reimbursement Event**” has the meaning given in Section 30.5(a) of the Project Agreement.
- 1.507 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Correctional Facility Specific Change in Law.
- 1.508 “**Relevant Conviction**” means:
- (a) during the period from Commercial Close until the Substantial Completion Date, a person has been charged with or convicted, at any time within the previous six years, of any offense:
 - (i) of moral turpitude in Canada or elsewhere;

- (ii) for which a record exists under the *Criminal Records Act*; or
 - (iii) otherwise designated as a Relevant Conviction by Contracting Authority or SolGen from time to time, having regard to the secure nature of the Site and the Facility,

and that conviction remains in effect at that time and is one for which a pardon has not been granted; and
- (b) during the Operational Term, a person has been charged with or convicted of any offense:
- (i) of moral turpitude in Canada or elsewhere;
 - (ii) for which a record exists under the *Criminal Records Act*; or
 - (iii) otherwise designated as a Relevant Conviction by Contracting Authority or SolGen from time to time, having regard to the secure nature of the Site and the Facility,

and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.509 “**Relevant Insurance**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.510 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.511 “**Relief Event**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.512 “**Remedial Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.513 “**Replacement Lifecycle**” means the cycle, expressed in years, for which a material, system, item of equipment or other element of the Facility is expected to remain in good condition (Normal Wear and Tear excepted) and, if applicable, operating order, consistent with the performance requirements outlined in the Output Specifications (Normal Wear and Tear excepted) before requiring complete replacement, refreshment or refurbishment.
- 1.514 “**Request for Payment**” has the meaning given Schedule 19 – Construction Period Payments.
- 1.515 “**Request for Payment Approval**” has the meaning given in Section 18.12(d) of the Project Agreement.
- 1.516 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on March 31, 2021.
- 1.517 “**Rescue Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.518 “**Response**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.519 “**Response Time**” has the meaning given in Schedule 20 – Payment Mechanism.

Thunder Bay Correctional Complex Project

- 1.520 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which Contracting Authority considers unacceptable in its sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by Contracting Authority in its sole discretion);
 - (d) in the case of an individual, (i) has been convicted of any indictable offence, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (e) in the case of a person other than an individual, if it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
 - (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (g) is subject to a material claim of Contracting Authority or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Contracting Authority’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
 - (h) has a material interest in the production of tobacco products.

Thunder Bay Correctional Complex Project

- 1.521 “**Return Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.522 “**Review Procedure**” means the procedure set out in Schedule 10 – Review Procedure.
- 1.523 “**Revised Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.524 “**Roads & Grounds Maintenance Services**” means those roads and grounds maintenance services to be carried out pursuant to Section 3.8 of Part IV of Schedule 15 – Output Specifications.
- 1.525 “**Safety Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.526 “**Schedule**” means a schedule to the Project Agreement.
- 1.527 “**Schedule 27 Procedural Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.528 “**Scheduled Final Completion Date**” means [REDACTED].
- 1.529 “**Scheduled Initial Capital Investment Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.530 “**Scheduled Maintenance**” means all preventive, planned, scheduled and/or frequency-based maintenance and other work (other than Unscheduled Maintenance) which Project Co is required to perform in accordance with the Project Agreement (including, for clarity, Part IV of Schedule 15 – Output Specifications) and the Scheduled Maintenance Plan along with the performance of any replacement, refreshment and/or refurbishment of building systems, equipment and fixtures in accordance with the Lifecycle Replacement Schedule, all to ensure that building components, equipment and fixtures will achieve their expected design or service life, and will provide reliable functionality within the defined performance parameters.
- 1.531 “**Scheduled Maintenance Plan**” means the plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part IV of Schedule 15 – Output Specifications and the other provisions of the Project Agreement during each Contract Year, which plan shall be based, in part, on the Project Co Proposal Extracts.
- 1.532 “**Scheduled Substantial Completion Date**” means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.533 “**Seasonal Bedding-In Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.534 “**Seasonal Works**” means any seasonal adjustment required to complete the Project Co Commissioning, as applicable, or any sodding, planting, or other soft landscaping that cannot be completed prior to Substantial Completion due to seasonal impacts.
- 1.535 “**Seasonal Works Certification Date**” has the meaning given in Section 24.10(e) of the Project Agreement.
- 1.536 “**Seasonal Works Completion Period**” means the period of time described in Section 24.9(a)(ii) of the Project Agreement within which Project Co is required to complete all Seasonal Works.

- 1.537 “**Seasonal Works Holdback**” has the meaning given in Section 24.8(b)(i).
- 1.538 “**Seasonal Works List**” has the meaning given in Section 24.8(a)(ii) of the Project Agreement.
- 1.539 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.540 “**Security Clearance Check**” means:
- (a) a written declaration by an individual disclosing any unresolved charges and previous convictions under the offence provisions of federal statutes, including but not limited to the *Criminal Code* (Canada), for which a pardon under the *Criminal Records Act* (Canada) has not been granted;
 - (b) a police records check through CPIC and provincial and municipal police force records for information about the individual in relation to:
 - (i) convictions under the offence provisions of federal statutes, including but not limited to the *Criminal Code* (Canada), for which a pardon under the *Criminal Records Act* (Canada) has not been granted;
 - (ii) findings of guilt in relation to federal statutes for which a court has not granted a discharge;
 - (iii) charges laid under the offence provisions of any statutes that are unresolved; and
 - (iv) records of judicial orders in effect made in relation to the offence provisions of federal statutes;
 - (c) a police records check in other jurisdictions as deemed necessary by the information provided to Contracting Authority during a Security Clearance Check; and
 - (d) a driving records check if deemed necessary by Contracting Authority considering the circumstances of the Project Operations.
- 1.541 “**Security Clearance Check Date**” means each of the following dates:
- (a) Commercial Close;
 - (b) the date that is no later than 180 days prior to the Scheduled Substantial Completion Date;
 - (c) the fifth anniversary of the date set out in paragraph (b) above; and
 - (d) every fifth anniversary of the date determined in accordance with paragraph (c) above.
- 1.542 “**Security Clearance Check Requirements**” means the security clearance check requirements set out in Schedule 7 – Security Clearance Check Requirements.
- 1.543 “**Security & Surveillance Services**” means those security and surveillance services to be carried out pursuant to Section 3.12 of Part IV of Schedule 15 – Output Specifications.
- 1.544 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.

Thunder Bay Correctional Complex Project

- 1.545 “**Security Screening Program**” means the security screening program operated by CSIS under the *Canadian Security Intelligence Service Act*.
- 1.546 “**Senior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, all to the extent set out in the Financial Model at such time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount is only to the extent applied for the purposes of the Project and excludes the Senior Debt Makewhole.
- 1.547 “**Senior Debt Makewhole**” means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “makewhole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to then pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage benefits, if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.
- 1.548 “**Senior Debt Service Amount**” means, for any period, the principal, interest, and commitment fees payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to a Hedging Agreement between Project Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly.
- 1.549 “**Senior Lenders**” means [REDACTED], and their permitted successors and assigns, at any time and any additional lenders financing any Refinancing. For greater clarity, Senior Lenders excludes:
- (a) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns;
 - (b) the Junior Lenders; and
 - (c) any Affiliate of Project Co, any Project Co Party or any Affiliate of a Project Co Party.
- 1.550 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.551 “**Service Contract**” means the facility maintenance and services agreement between Project Co and the Service Provider dated on or about the date of the Project Agreement.

Thunder Bay Correctional Complex Project

- 1.552 “**Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.553 “**Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.554 “**Service Failure Performance Indicator**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.555 “**Service Guarantor**” means [REDACTED].
- 1.556 “**Service Provider**” means [REDACTED], engaged by Project Co to perform the Project Co Services and any substitute service provider engaged by Project Co as may be permitted by the Project Agreement.
- 1.557 “**Service Provider’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Service Provider and the Service Guarantor, in the form set out in Schedule 5-2 – Service Provider’s Direct Agreement.
- 1.558 “**Service Quality Plan**” means such plan to be developed pursuant to the Output Specifications and the Final Commissioning Program.
- 1.559 “**Service Standards**” means the performance standards for each Project Co Service set out in Part IV of Schedule 15 – Output Specifications.
- 1.560 “**Service Submittal**” or “**Service Submittals**” has the meaning given in Section 11.1 of Schedule 10 – Review Procedure.
- 1.561 “**Service Request**” – has the meaning given in Part IV of Schedule 15 – Output Specifications.
- 1.562 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which:
- (a) result in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affect access by Project Co to such markets.
- 1.563 “**Severe SolGen Security Event**” means a large-scale incident, from the actions of a significant portion of the Inmate population, with destruction of property, violence and threats to personal safety and institutional security at the Facility.
- 1.564 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.565 “**Site**” has the meaning given in Schedule 35 – Site.
- 1.566 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.

Thunder Bay Correctional Complex Project

- 1.567 “**Site Office**” has the meaning given in Section 18.8(e) of the Project Agreement.
- 1.568 “**Site Requirements**” means the requirements, if any, for the phasing and sequencing of the Works and the use of and access to the Site, as set out in Part V of Schedule 15 – Output Specifications.
- 1.569 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by Contracting Authority to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Failure Event occurring, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Project Co Services. For clarity, Small Works generally requires no more than two types of trades to implement the work.
- 1.570 “**SolGen**” means the Ministry of the Solicitor General of Ontario, and includes any successors thereto or persons exercising delegated power and the Minister’s authority.
- 1.571 “**SolGen Equipment**” means the equipment listed in the column labelled “SolGen Equipment” in the Equipment List and the procurement of which Contracting Authority is responsible pursuant to Section 21.3 of the Project Agreement.
- 1.572 “**SolGen Staff**” means all persons who are employed or engaged by the Crown in connection with the conduct of Correctional Complex Activities by SolGen at or in connection with the Existing Facilities prior to the Substantial Completion and at or in connection with the Facility during the Project Term, while attending at the Facility or the Site in their official capacity.
- 1.573 “**SolGen Visitors**” means persons authorized by SolGen to visit the Facility or the Existing Facilities, except Inmate Visitors.
- 1.574 “**Species-at-Risk**” means any member of a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism that is listed in the Species at Risk in Ontario List maintained pursuant to the ESA and any analogous federal list under the *Species at Risk Act* (Canada), and any other species that has been classified as being threatened or endangered under Applicable Law.
- 1.575 “**Standby Letter of Credit**” means the letter of credit delivered in accordance with Section 9.1(2) of the Request for Proposals.
- 1.576 “**Start-Up Meeting**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.577 “**Step-In Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.578 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, the Service Provider, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.579 “**Subcontractor Losses**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.580 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor and the Service Provider, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.

Thunder Bay Correctional Complex Project

- 1.581 “**Submittal**” means either a Works Submittal or a Service Submittal.
- 1.582 “**Substantial Completion**” means the point at which:
- (a) the Facility, including all of the Works, has been completed in accordance with the Project Agreement, other than in respect of Minor Deficiencies and Seasonal Works;
 - (b) the Occupancy Permit has been issued;
 - (c) the Payment Certifier appointed pursuant to Section 15.3(e) of the Project Agreement has certified the substantial performance of the Construction Contract and the related certificate of substantial performance has been published, each in accordance with the Construction Act;
 - (d) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies and Seasonal Works, have been satisfied; and
 - (e) notwithstanding anything to the contrary in the Project Agreement, all areas of the Facility inside the security perimeters of the Facility have been completed in accordance with the Project Agreement without any defects or deficiencies where such defect or deficiency could compromise any safety, security or emergency response capability of Contracting Authority or any Province Person.
- 1.583 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.584 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.585 “**Substantial Completion Deliverables**” has the meaning given in Section 24.7(d) of the Project Agreement.
- 1.586 “**Substantial Completion Deliverables List**” has the meaning given in Section 24.7(d) of the Project Agreement.
- 1.587 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.588 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.589 “**Supplementary Payment Calculation Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.590 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.591 “**Systemic Racism**” means organizational culture, policies, directives, practices or procedures that exclude, displace or marginalize some racialized groups or create unfair barriers for them to access valuable benefits and opportunities. Systemic Racism is often the result of institutional

- biases in organizational culture, policies, directives, practices, and procedures that may appear neutral but have the effect of privileging some groups and disadvantaging others.
- 1.592 “**Target Energy Model**” has the meaning given in Schedule 36 – Energy Matters.
- 1.593 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the Contracting Authority Taxes.
- 1.594 “**TBPS**” means the Thunder Bay Police Service.
- 1.595 “**Technical Member**” has the meaning given in Schedule 27 – Dispute Resolution.
- 1.596 “**Technical Reference Date**” means October 26, 2021.
- 1.597 “**Technical Reports**” means, collectively, the following documents:
- (a) the Environmental Reports and Designated Substance Reports;
 - (b) the Geotechnical Reports; and
 - (c) the Archeological Reports.
- 1.598 “**Technical Submission Deadline**” means November 15, 2021.
- 1.599 “**Temporary Alternative Accommodation**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.600 “**Temporary Repair**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.601 “**Tender Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.602 “**Tender Process**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.603 “**Tender Process Monitor**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.604 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.605 “**Third Party Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.606 “**Third Party Litigation**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.607 “**Threshold Equity Sale Amount**” means an Equity Sale Amount that would result in an Equity Sale IRR equal to the Base Case Equity IRR.

Thunder Bay Correctional Complex Project

- 1.608 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 – Title Encumbrances and any other Encumbrance consented to by Contracting Authority and reasonably required in connection with the development of the Facility and the Project Operations.
- 1.609 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.610 “**Transition**” has the meaning given in Section 24.14(a) of the Project Agreement.
- 1.611 “**Transition Advisor**” has the meaning given in Section 24.14(b) of the Project Agreement.
- 1.612 “**Transition Management Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.613 “**Transition Subcommittee**” has the meaning given in Section 24.15(a) of the Project Agreement.
- 1.614 “**Trespassers**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.615 “**Unavailable**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.616 “**Uninsurable Risk**” has the meaning given in Section 8.1 of Schedule 25 – Insurance and Performance Security Requirements to the Project Agreement.
- 1.617 “**Unit Weighting Percentage**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.618 “**Unpaid Construction Period Payments**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.619 “**Unscheduled Maintenance**” means all Ad-Hoc Services, Emergency Maintenance, first response maintenance and/or other maintenance that is not scheduled (and excludes Scheduled Maintenance) to the Site, the Facility and the Equipment, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:
- (a) first response to equipment malfunctions and assessment of the problem (e.g., operator error, utility problem, minor or major failure), and required response;
 - (b) performance of minor repairs and general maintenance, including filter changes, topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulley and hoses; and
 - (c) in the case of repairs that cannot be resolved under the immediately preceding subsection, arranging for and overseeing third party service representatives to make necessary repairs provided that Project Co has obtained approval from Contracting Authority, acting reasonably, for such third party repairs.
- 1.620 “**Unscheduled Maintenance Work**” has the meaning given in Section 26.4(a) of the Project Agreement.
- 1.621 “**Use Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.622 “**Use Parameters**” has the meaning given in Schedule 20 – Payment Mechanism.

Thunder Bay Correctional Complex Project

- 1.623 “**Utilities**” means Energy, lighting and water supplies, communications, data transmission and waste recovery, including electricity, natural gas, fuel oil, renewable energy, sustainable energy, water, sanitary waste, storm water, heat, steam, bulk medical gas compounds, wireless and other similar commodities and substances which serve the public directly or indirectly.
- 1.624 “**Utilities Management Services**” means those utilities management services to be carried out pursuant to Section 3.4 of Part IV of Schedule 15 – Output Specifications.
- 1.625 “**Utilities Management Subcommittee**” has the meaning given in Schedule 36 – Energy Matters.
- 1.626 “**Utility Company**” means any owner or operator of Utility Infrastructure.
- 1.1 “**Utility Infrastructure**” means any privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing any Utilities, and all related infrastructure.
- 1.627 “**Utility Reports**” has the meaning given in Section 16.5(a)(ii) of the Project Agreement.
- 1.628 “**Utility User(s)**” means those persons using Utilities at the Facility, the Existing Facilities or on the Site.
- 1.629 “**Variation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.630 “**Variation Confirmation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.631 “**Variation Directive**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.632 “**Variation Enquiry**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.633 “**Variation Procedure**” means the procedure set out in Schedule 22 – Variation Procedure.
- 1.634 “**Visitors**” means, collectively, Inmate Visitors, SolGen Visitors and Facility Volunteers.
- 1.635 “**Warning Notice**” has the meaning given in Section 29.3(a) of the Project Agreement.
- 1.636 “**WHMIS**” means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.637 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Facility, the completion and rectification of any Minor Deficiencies and completion of the Seasonal Works, and any other activities required to enable or facilitate the commencement of the Project Co Services, including the performance of all background checks required pursuant to Schedule 7 – Security Clearance Check Requirements and all work under the Permits, Licences, Approvals and Agreements, save and except for (i) all work which is expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation as being the responsibility of Contracting Authority and (ii) the Contracting Authority Commissioning.
- 1.638 “**Works Activities**” has the meaning given in Schedule 12 – Works Scheduling Requirements.

Thunder Bay Correctional Complex Project

- 1.639 “**Works Area Micro-Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.640 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
 - (b) occurs after the date of the Project Agreement;
 - (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which is not Works, Maintenance Work or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (d) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.
- 1.641 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.642 “**Works Milestone**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.643 “**Works Report**” has the meaning given in Section 20.6(a) of the Project Agreement.
- 1.644 “**Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.645 “**Works Schedule Progress Report**” has the meaning given in Schedule 34 – Works Report Requirements.
- 1.646 “**Works Submittal**” or “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 – Review Procedure.
- 1.647 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).

2. **Interpretation**

The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or

Thunder Bay Correctional Complex Project

- Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

Thunder Bay Correctional Complex Project

- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of Contracting Authority or any Province Person shall be construed having regard to the interactive nature of the activities of Contracting Authority, the Province Persons and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
 - (b) acts or omissions in the ordinary course of the Correctional Complex Activities and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Co Services; or
 - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co’s and Contracting Authority’s respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (b) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

Thunder Bay Correctional Complex Project

- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in the City of Thunder Bay, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or Contracting Authority they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Contracting Authority shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to Contracting Authority shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the correctional facilities sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:
- $$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$
- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background

Information and of the Site, including the Existing Facilities, carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

APPENDIX 1

PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)

CONTRACTING AND PROJECT CO PLAA RESPONSIBILITY TABLE

– Please see attached document –

APPENDIX 2

LISTED PROJECT CO PLAAS

[REDACTED]

APPENDIX 3

CONTRACTING AUTHORITY SECURITY DEPOSITS

None.

APPENDIX 1

PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)

CONTRACTING AUTHORITY AND PROJECT CO PLAA RESPONSIBILITY TABLE

[REDACTED]

SCHEDULE 2

COMPLETION DOCUMENTS

1. Documents to be delivered by Project Co

A copy of each of the following documents (in each case, executed by the parties to such agreement other than Contracting Authority and in form and substance satisfactory to Contracting Authority, acting reasonably) is to be delivered by Project Co to Contracting Authority on or prior to the Financial Close Target Date:

- 1.1 the Project Agreement;
- 1.2 the Custody Agreement;
- 1.3 the Lenders' Direct Agreement;
- 1.4 the Construction Contractor's Direct Agreement;
- 1.5 the Service Provider's Direct Agreement;
- 1.6 the Independent Certifier Agreement;
- 1.7 the CDB Member Statement for the Technical Member put forward by Project Co, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements;
- 1.8 the Insurance Trust Agreement;
- 1.9 a notice of appointment of the Project Co Representative;
- 1.10 the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.11 the Lending Agreements;
- 1.12 the Construction Contract;
- 1.13 the Service Contract;
- 1.14 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor for the period prior to the Substantial Completion Date in accordance with this Project Agreement;
- 1.15 the Financial Model, in electronic form;
- 1.16 a certificate of an officer of Project Co certifying:

Thunder Bay Correctional Complex Project

- (a) a true copy of the Financial Model audit report dated April 22, 2022 prepared by [REDACTED]; and
 - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.17 the Proposed Works Schedule and the Interim Works Schedule, both in form and substance satisfactory to Contracting Authority;
- 1.18 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.20 a certificate of an officer of the Service Provider substantially in the form attached as Appendix B to this Schedule 2;
- 1.21 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.22 a certificate of an officer of the Service Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.23 the opinion from counsel to Project Co, the Construction Contractor, the Service Provider, the Construction Guarantor, the Service Guarantor and such other Project Co Parties as Contracting Authority may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to Contracting Authority and its counsel;
- 1.24 the Project Co constating documentation, for example, [REDACTED];
- 1.25 the Performance Guarantees, Subcontract Default Insurance (as defined in the Construction Contract) and the Performance Plus Bond (as defined in the Construction Contract);
- 1.26 the Energy Submission (as defined in the Request for Proposals), including:
- (a) the LEED Proposed Building Energy Model; and
 - (b) an original of the Energy Target Letter;
- 1.27 evidence that the COR-Certified Construction Project Co Party has its COR Certification in good standing;
- 1.28 evidence that the COR-Qualified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified

Thunder Bay Correctional Complex Project

Construction Project Co Party has its current ISO 45001 Accreditation in good standing and has made an application to IHSA for its COR Certification);

- 1.29 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.30 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a CAD-7, or, if a CAD-7 is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.31 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (WISR) or, if a WSIR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.32 a certificate of an officer of Project Co certifying the corporate structure of Project Co as at the date thereof; and
- 1.33 such other documents as the parties may agree, each acting reasonably.

2. Documents to be delivered by Contracting Authority

A certified copy of each of the following documents (in each case, where Contracting Authority is a party to such document, executed by Contracting Authority and, if applicable, any Contracting Authority Party or Governmental Authority) is to be delivered by Contracting Authority to Project Co on or prior to the date of the Financial Close Target Date:

- 2.1 the Project Agreement;
- 2.2 the Custody Agreement;
- 2.3 the Lenders' Direct Agreement;
- 2.4 the Construction Contractor's Direct Agreement;
- 2.5 the Service Provider's Direct Agreement;
- 2.6 the Independent Certifier Agreement;
- 2.7 the CDB Member Statement for the Technical Member put forward by Contracting Authority, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements;

Thunder Bay Correctional Complex Project

- 2.8 the Insurance Trust Agreement;
- 2.9 a notice of appointment of Contracting Authority Representative;
- 2.10 a certificate of an officer of Contracting Authority substantially in the form attached as Appendix D to this Schedule 2;
- 2.11 a certificate of an officer of IO and a declaration of management signed by an officer of Contracting Authority substantially in the forms attached as Appendix E to this Schedule 2; and
- 2.12 such other documents as the parties may agree, each acting reasonably.

3. Post-Financial Close Project Co Deliverables

Project Co shall deliver to Contracting Authority each of the following items:

- 3.1 within five (5) Business Days following Financial Close, (a) one printed copy of the Financial Model, and (b) two electronic copies of the Financial Model, each on a USB key; and
- 3.2 within fifteen (15) Business Days following Financial Close, two (2) USB keys, each containing electronic copies of all of the documents described in Sections 1 and 2 of this Schedule 2.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”)

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 22nd day of April, 2022 between Contracting Authority and EllisDon Infrastructure TBCC General Partnership (“**Project Co**”)

1. The undersigned acknowledges that:
 - (a) The Project will proceed as a public-private partnership project and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount.
 - (ii) Value for money must be demonstrable.
 - (iii) Appropriate public control/ownership must be preserved.
 - (iv) Accountability must be maintained.
 - (v) All processes must be fair, transparent and efficient.
 - (c) Public ownership of the Facility will be preserved.
2. The undersigned undertakes to comply with all Applicable Law in any direction or order issued by Contracting Authority to the extent that the direction or order affects the Project Operations.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

DATED this _____ day of _____, 202__.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

APPENDIX B

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER’S CERTIFICATE

CERTIFICATE OF AN OFFICER OF

[●]

(THE “CORPORATION”)

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“Contracting Authority”)

AND TO: MINISTRY OF THE SOLICITOR GENERAL

AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

AND TO: McCARTHY TÉTRAULT LLP

AND TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

I, [●], being the [●] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constatting Documents

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of [the Province of Ontario].
- (b) Attached hereto as **Schedule “A”** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the “**Articles**”). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule “B”** are true and complete copies of the by-laws of the Corporation (the “**By-laws**”) enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein

and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.

- (d) Attached hereto as **Schedule “C”** is a true and complete copy of a unanimous shareholders’ agreement between the shareholders of the Corporation and the Corporation (the “**Unanimous Shareholders’ Agreement**”) executed on or before the date hereof. The Unanimous Shareholders’ Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders’ Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [**Business Corporations Act (Ontario) (the “Act”)**], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders’ Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.

Thunder Bay Correctional Complex Project

- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
 - (i) restrict or limit the powers of the Corporation to enter into:
 - (1) a certain project agreement with Contracting Authority made as of April 22, 2022 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”) pursuant to which the Corporation will design, build, finance and maintain a new correctional facility;
 - (2) a lenders' direct agreement between the Corporation, Contracting Authority and the Lenders' Agent;
 - (3) a direct agreement between [REDACTED] (the “**Construction Contractor**”), the Corporation, the Construction Guarantor and Contracting Authority
 - (4) a direct agreement between [REDACTED] (the “**Service Provider**”), the Corporation, the Service Guarantor and Contracting Authority; and
 - (5) [NTD: List other documents delivered at as of the date hereof.],
 - (collectively, the “**Documents**”); or
 - (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the [directors/shareholders] of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
 - (i) the Articles, By-laws or the Unanimous Shareholders' Agreement;

Thunder Bay Correctional Complex Project

- (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;
 - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound;
or
 - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders’ Agreement or under any other agreement binding on the Corporation.

4. Specimen Signatures

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

ISSUED SHARES

REGISTERED OWNER

Attached hereto as **Schedule “E”** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this ____ day of _____, 202__.

Name:

Title:

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

**Ontario Infrastructure and Lands
Corporation**

Infrastructure Ontario
Suite 2000, 1 Dundas St. West
Toronto, Ontario M5G 1Z3

Ministry of the Solicitor General

Ministry of Solicitor General
25 Grosvenor Street, Suite 13-100
Toronto, Ontario
M7A 1Y6

McCarthy Tétrault LLP

Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Sirs/Mesdames:

Re: Thunder Bay Correctional Complex Project

We have acted as counsel to EllisDon Infrastructure TBCC General Partnership (“**Project Co**”), **[REDACTED]** (the “**Construction Contractor**”) and **[REDACTED]** (the “**Service Provider**”) in connection with the public-private partnership transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for a new correctional facility in Thunder Bay, Ontario. **[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]**

This opinion is being delivered to Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”), the Ministry of the Solicitor General and their counsel pursuant to Section 1.25 of Schedule 2 to the project agreement made as of April 22nd, 2022 between Contracting Authority and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co, the Construction Contractor and the Service Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of April 22, 2022):

Thunder Bay Correctional Complex Project

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
 - (a) the Construction Contract;
 - (b) the Service Contract;
 - (c) the Lenders’ Direct Agreement;
 - (d) the Construction Contractor’s Direct Agreement;
 - (e) the Service Provider’s Direct Agreement;
 - (f) the Lending Agreements; and
 - (g) the Performance Guarantees.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. [NTD: **Additional documents to be added depending on consortium structure and/or the financing package.**]

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to [**Project Co, the Construction Contractor or the Service Provider**], nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co, the Construction Contractor and the Service Provider dated as of the date hereof (the “**Officer’s Certificates**”) as to certain factual matters.

Searches and Reliance

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of Project Co, the Construction Contractor and the Service Provider (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer’s Certificates.

Thunder Bay Correctional Complex Project

We have relied exclusively, and without any independent investigation or enquiry, on the Officer's Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the [Ministry of Government Services (Ontario)] of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 202[●] (the "CC Opinion"), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 202[●] (the "SP Opinion"), a copy of which has been delivered to you. To the extent that the SP Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the SP Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each

Thunder Bay Correctional Complex Project

Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to Project Co, the Construction Contractor and the Service Provider.

Opinions

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

Incorporation and Existence

1. Project Co is a corporation incorporated under the laws of the Province of Ontario and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of the Province of Ontario and has not been dissolved.
3. The Service Provider is a corporation incorporated under the laws of the Province of Ontario and has not been dissolved.

Corporate Power and Capacity

4. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Service Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

Thunder Bay Correctional Complex Project

Corporate Authorization

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Service Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

10. Project Co has duly executed and delivered each of the Documents to which it is a party.
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Service Provider has duly executed and delivered each of the Documents to which it is a party.

Enforceability

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Service Provider is a party constitutes a legal, valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms.

No Breach or Default

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations

Thunder Bay Correctional Complex Project

under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.

18. The execution and delivery by the Service Provider of the Documents to which it is a party does not, and the performance by the Service Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Service Provider is subject.

Regulatory Approvals

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Service Provider of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.

Thunder Bay Correctional Complex Project

3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.

Thunder Bay Correctional Complex Project

14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Contracting Authority for which it would be contrary to public policy to require Project Co to indemnify Contracting Authority or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D

FORM OF
CERTIFICATE OF AN OFFICER OF
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
(the “Corporation”)

TO: ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP
 (“Project Co”)

AND TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

RE: Project Agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the 22nd day of April, 2022 between Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation and Project Co

I, [●], the [●] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Attached hereto as **Schedule ”A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule ”B”** is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the successful bidder for the Thunder Bay Correctional Complex Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Government and Consumer Services (the “**Minister**”) has not given a direction pursuant to Subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c.9, Schedule 32, as amended (the “**Act**”) that limits the scope of the objects of the Corporation as they are set out in Subsection 4(1) of the Act.

Thunder Bay Correctional Complex Project

4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Thunder Bay Correctional Complex Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
[●]		
[●]		
[●]		
[●]		

DATED this _____ day of _____, 20[●].

By: _____
Name:
Title:

APPENDIX E

**FORM OF DECLARATION OF MANAGEMENT
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**

(the “Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS Her Majesty the Queen in Right Of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation and [●] propose to enter into a Project Agreement relating to the Thunder Bay Correctional Complex Project (the “**Project**”);

AND WHEREAS the Corporation will from time to time enter into agreements for the design, construction and/or facilities management of the Project assigned to the Corporation by the Minister of Government and Consumer Services and as well as ancillary agreements, instruments, certificates and other documents required to give effect to, or contemplated to be delivered in accordance with the Project (collectively, “**Project Documents**”);

NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:

1. by resolution of the board of directors of the Corporation passed on [●], 20[●], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Project Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Project Documents;
2. the Corporation’s management may execute and deliver the Project Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Project Documents from time to time (collectively, together with the Project Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and
3. the Project Documents to be executed and delivered by the Corporation in connection with the Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the Project from the Corporation.

THIS DECLARATION may be signed in counterparts, and all such counterparts, when taken together, shall constitute one and the same declaration, effective on this date.

DATED this _____ day of _____, 20[●].

Name: [●]
Title: Secretary

SCHEDULE 3

CUSTODY AGREEMENT

THIS AGREEMENT is made as of the 22 day of April, 2022

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**Contracting Authority**”)

AND:

ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Custodian**”)

AND:

[REDACTED]

(the “**Lenders’ Agent**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.

Thunder Bay Correctional Complex Project

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

1. Definitions

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Contracting Authority**” has the meaning given in the preamble.
- (b) “**Contracting Authority Signatory**” has the meaning given in Section 6(a)(i).
- (c) “**Custodian**” has the meaning given in the preamble.
- (d) “**Lenders’ Agent**” has the meaning given in the preamble.
- (e) “**Material**” means hard and electronic copies of the Financial Model.
- (f) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (g) “**Party**” means Contracting Authority, the Custodian, Project Co or the Lenders’ Agent, and “**Parties**” means Contracting Authority, the Custodian, Project Co and the Lenders’ Agent.
- (h) “**Project Agreement**” means the project agreement made on or about the 22nd day of April, 2022 between Contracting Authority and Project Co.
- (i) “**Project Co**” has the meaning given in the preamble.
- (j) “**Project Co Signatory**” has the meaning given in Section 6(a)(ii).
- (k) “**Step-Out Date**” has the meaning given in Section 14(e).

2. Interpretation

This Custody Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.

Thunder Bay Correctional Complex Project

- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms “Section” and “Section” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Custody Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Custody Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day

Thunder Bay Correctional Complex Project

for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (j) Where this Custody Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. Project Co’s Duties and Warranties

- (a) Contracting Authority will, together with Project Co, verify the identity and consistency of two copies of the Material, which shall be delivered by Project Co to the Custodian within five (5) Business Days following Financial Close under the Project Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to Contracting Authority and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
 - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
 - (ii) the use of the Materials by Contracting Authority under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
 - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

4. Custodian’s Duties

- (a) The Custodian shall:

Thunder Bay Correctional Complex Project

- (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
 - (ii) hold the Material in a safe and secure environment;
 - (iii) inform Project Co and Contracting Authority of the receipt of any copy of the Material;
 - (iv) at all times retain a copy of the latest verified deposit of the Material; and
 - (v) promptly notify Project Co and Contracting Authority if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent, and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

5. Payment

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

6. Release Events

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
- (i) the President and CEO and designated signing officers of Contracting Authority or such other person nominated by it and notified to the Custodian and Project Co in writing (the "**Contracting Authority Signatory**"); and
 - (ii) the President and CEO and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and Contracting Authority in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the Contracting Authority Signatory and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the Contracting Authority Signatory and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized officer of Contracting Authority on any termination of the Project Agreement prior to the Expiry Date.

7. Records

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

8. Confidentiality

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to Contracting Authority, Contracting Authority shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, subcontractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, Contracting Authority shall:
 - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of Contracting Authority;
 - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of Contracting Authority;
 - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
 - (iv) forthwith destroy the same should Contracting Authority cease to be entitled to use the Financial Model.

Thunder Bay Correctional Complex Project

9. Intellectual Property Rights

- (a) The release of the Material to Contracting Authority and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

10. Inspection

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for Contracting Authority and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

11. Custodian's Liability

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or Contracting Authority either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or Contracting Authority for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.

- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and Contracting Authority, in writing, of such process and the Custodian's intended action in order to provide Project Co and Contracting Authority a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel at the expense of Project Co and Contracting Authority as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and Contracting Authority in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and Contracting Authority, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled,

acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and Contracting Authority of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or Contracting Authority for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and Contracting Authority.

- (k) Each of Project Co and Contracting Authority shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by electronic transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

12. Indemnity

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and Contracting Authority, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.

Thunder Bay Correctional Complex Project

- (b) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

13. Termination

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and Contracting Authority. In that event, Project Co and Contracting Authority shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) Contracting Authority may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of Contracting Authority, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Contracting Authority.
- (f) This Custody Agreement shall terminate upon release of the Material to Contracting Authority in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it

will notify Contracting Authority of Project Co's request and, failing receipt of any notice of objection from Contracting Authority within 30 days of the receipt of the notice by Contracting Authority, it shall release the Materials to Project Co.

- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

14. Step-In Rights

- (a) The Custodian shall, from time to time:
- (i) permit Contracting Authority to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
 - (ii) permit Project Co to perform or discharge any obligation of Contracting Authority under this Custody Agreement, where Contracting Authority is in breach of the same; and
 - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to Contracting Authority and SolGen), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by Contracting Authority pursuant to Section 14(a)(i).
- (c) Contracting Authority consent to the performance or discharge of their obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).
- (e) Contracting Authority or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (Contracting Authority or the Lenders' Agent at the same time shall provide a copy of any such notification to the other Party) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.

Thunder Bay Correctional Complex Project

- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co’s obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders’ Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

15. Assignment

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and Contracting Authority and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders’ Agent.

16. Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Custody Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Custody Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority: [REDACTED]
c/o Ontario Infrastructure and
Lands Corporation:

With a copy to:

[REDACTED]

Thunder Bay Correctional Complex Project

If to Project Co: [REDACTED]

With a copy to:

[REDACTED]

If to the Custodian: [REDACTED]

With a copy to:

[REDACTED]

If to the Lenders’ Agent: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party’s failure to comply with this Section 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 16.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business

Thunder Bay Correctional Complex Project

Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

17. Right to Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated Person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated Person from time to time, until the Crown has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated Person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Custodian and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 17.

18. Amendments

- (a) This Custody Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Custody Agreement.

19. Waiver

- (a) No waiver made or given by a Party under or in connection with this Custody Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

Thunder Bay Correctional Complex Project

20. Relationship Between the Parties

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

21. Entire Agreement

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

22. Severability

- (a) Each provision of this Custody Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Custody Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Custody Agreement. If any such provision of this Custody Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Custody Agreement as near as possible to its original intent and effect.

23. Enurement

- (a) This Custody Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

24. Governing Law and Jurisdiction

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

25. Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Custody Agreement.

26. Language of Agreement

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en declare satisfaite.

27. Proof of Authority

- (a) Contracting Authority reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to Contracting Authority, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

28. Counterparts

- (a) This Custody 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Custody Agreement as of the date first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

APPENDIX A

CONDUCT OF CLAIMS

This Appendix A shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and Contracting Authority and Project Co are referred to, collectively, as the “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 12 of the Custody Agreement, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix A, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. In such case, Contracting Authority may, but shall not be obligated to, assume (on prior written notice to Project Co) control of any such defence for and on behalf of itself and Project Co, and Project Co hereby consents to such assumption. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim at its own cost and expense.
- (3) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

Thunder Bay Correctional Complex Project

- (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Custody Agreement if:
 - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2); or
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (7) Any person taking any of the steps contemplated by this Appendix A shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Custody Agreement.

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 22 day of April, 2022.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the **MINISTER OF GOVERNMENT AND CONSUMER SERVICES**, as represented by **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**Contracting Authority**”)

- **AND** -

[REDACTED]

(the “**Lenders' Agent**”)

- **AND** -

ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. The overriding priorities of SolGen and Contracting Authority in entering into and implementing the Project Agreement are to procure, operate and maintain a safe, secure and humane institutional environment at the Facility and to provide for community safety through effective offender supervision, care, custody and intervention thereby effecting positive behavioural change and the reintegration of offenders into the community as productive citizens.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the “**Lenders' Direct Agreement**”) with Contracting Authority in relation to the Security, the exercise of

its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.

- E. With a view to ensuring that Contracting Authority is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Contracting Authority throughout the Project Term.

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

1. DEFINITIONS

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) “**Affiliate**” has the meaning given in the Project Agreement.
- (b) “**Appointed Representative**” means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by Contracting Authority (such approval not to be unreasonably withheld or delayed).
- (c) “**Appointed Representative Notice**” has the meaning given in Section 8(b).
- (d) “**Bond**” means the performance component of the performance plus bond issued by the Construction Contractor in favour of Project Co pursuant to the terms of the Construction Contract and in the form attached as Exhibit 5 to the Construction Contract, and for clarity shall not include the liquid component of such performance plus bond.
- (e) “**Business Day**” has the meaning given in the Project Agreement.
- (f) “**Change in Control**” has the meaning given in the Project Agreement.

- (g) “**Change in Ownership**” has the meaning given in the Project Agreement.
- (h) “**Construction Contract**” has the meaning given in the Project Agreement.
- (i) “**Construction Contractor**” has the meaning given in the Project Agreement.
- (j) “**Contracting Authority**” has the meaning given in the preamble.
- (k) “**Contracting Authority Project Documents**” means the Project Agreement and all other documents to which both Contracting Authority and Project Co are parties pursuant to or in connection with the Project Agreement.
- (l) “**Correctional Complex Activities**” has the meaning given in the Project Agreement.
- (m) “**Crown**” has the meaning given in the Project Agreement.
- (n) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (o) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (p) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (q) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (r) “**Equity Capital**” has the meaning given in the Project Agreement.
- (s) “**Exercise Date**” has the meaning given in Section 12(b).
- (t) “**Facility**” has the meaning given in the Project Agreement.
- (u) “**Failure Points**” has the meaning given in the Project Agreement.
- (v) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (w) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (x) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (y) “**Lenders**” has the meaning given in the Project Agreement.
- (z) “**Lenders’ Agent**” has the meaning given in the preamble.

- (aa) “**Lenders’ Consultant**” means Altus Group Limited.
- (bb) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (cc) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (dd) “**Longstop Date**” has the meaning given in the Project Agreement.
- (ee) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (ff) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (gg) “**Novation Date**” has the meaning given in Section 10(a).
- (hh) “**Novation Notice**” has the meaning given in Section 10(a).
- (ii) “**Party**” means any of Contracting Authority, Project Co or the Lenders’ Agent, and “**Parties**” means all of Contracting Authority, Project Co and the Lenders’ Agent.
- (jj) “**Private Capital Advance Confirmations**” has the meaning given in the Project Agreement.
- (kk) “**Private Capital Funding Confirmations**” has the meaning given in the Project Agreement.
- (ll) “**Project**” has the meaning given in the Project Agreement.
- (mm) “**Project Agreement**” means the project agreement made on or about the 22nd day of April, 2022 between Contracting Authority and Project Co.
- (nn) “**Project Co**” has the meaning given in the preamble.
- (oo) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (pp) “**Project Co Party**” has the meaning given in the Project Agreement.
- (qq) “**Project Documents**” has the meaning given in the Project Agreement.
- (rr) “**Project Operations**” has the meaning given in the Project Agreement.
- (ss) “**Province**” has the meaning given in the Project Agreement.
- (tt) “**Province Persons**” has the meaning given in the Project Agreement.
- (uu) “**Refinancing**” has the meaning given in the Project Agreement.

- (vv) “**Restricted Person**” has the meaning given in the Project Agreement.
- (ww) “**Scheduled Substantial Completion Date**” has the meaning given in the Project Agreement.
- (xx) “**Security**” means the Bond, the Insurance and any other security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (yy) “**Security Documents**” means all documents pursuant to which security is granted to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
 - (i) [REDACTED].
- (zz) “**Service Contract**” has the meaning given in the Project Agreement.
- (aaa) “**Service Provider**” has the meaning given in the Project Agreement.
- (bbb) “**SolGen**” means the Ministry of the Solicitor General of Ontario, and including any successor thereto or persons exercising delegated power and the Minister’s authority.
- (ccc) “**Step-In Date**” means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (ddd) “**Step-In Notice**” means the notice given by the Lenders’ Agent to Contracting Authority pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (eee) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7);
 - (iii) the date that a transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - A. the date falling 180 days after the Longstop Date, or

- B. the date falling two years after the Step-In Date.
- (fff) “**Step-Out Date**” means the date falling 30 days after the date on which Contracting Authority receives a Step-Out Notice.
- (ggg) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (hhh) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (iii) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (jjj) “**Suitable Substitute**” means a person, approved in writing by Contracting Authority in accordance with Sections 10(b) and 10(c), which:
- (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Contracting Authority Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Contracting Authority Project Documents.
- (kkk) (xx) “**Termination Date**” has the meaning given in the Project Agreement.
- (lll) “**Warning Notice**” has the meaning given in the Project Agreement.
- (mmm) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Lenders’ Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm,

partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders’ Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders’ Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

Thunder Bay Correctional Complex Project

- (j) Where this Lenders’ Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders’ Direct Agreement, the Project Agreement and either of the Direct Agreements, the provisions of this Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7 of this Lenders’ Direct Agreement); and
 - (iii) the date that any transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders’ Agent shall provide notice to Contracting Authority of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders’ Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arm’s length basis.

Thunder Bay Correctional Complex Project

- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (d) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (e) Contracting Authority acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of Financial Close.
- (f) Contracting Authority acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Contracting Authority Project Documents.
- (g) Contracting Authority agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (h) Any agreement provided to Project Co pursuant to Section 14.6(a) of the Project Agreement shall be in a form satisfactory to the Lenders' Agent, acting reasonably.
- (i) Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay all sums payable to Project Co under the Project Agreement to [REDACTED] and Project Co and Contracting Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Contracting Authority shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (j) Contracting Authority shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (k) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Contracting Authority shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (l) The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Construction Period Payments or Unpaid Construction Period Payments in accordance with the Project Agreement and Schedule 19 – Construction Period

Payments. The Lenders' Agent shall cause the Lenders' Consultant to provide Contracting Authority and the Independent Certifier with all Private Capital Advance Confirmations and Private Capital Funding Confirmations pursuant to Section 3 of Schedule 19 – Construction Period Payments. The Lenders' Agent acknowledges and agrees that this Section 5(l) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, all Private Capital Advance Confirmations and Private Capital Funding Confirmations to Contracting Authority and the Independent Certifier.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify Contracting Authority of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or any of its Affiliates, is a Restricted Person or a person whose standing or activities (i) are inconsistent with SolGen's role (in its reasonable opinion) generally in the Province or with respect to the Correctional Complex Activities; (ii) may compromise the reputation of Contracting Authority, SolGen, and/or the Province; (iii) may compromise the integrity of the Facility; or (iv) are inconsistent with the nature of the Province's correctional system, so as to affect public confidence in that system.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, Contracting Authority may, at any time,

serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.

- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Contracting Authority shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) Contracting Authority promptly delivers written notice (a “**Default Notice**”) to the Lenders’ Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, Contracting Authority delivers written notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
 - A. all amounts owed by Project Co to Contracting Authority and any other existing liabilities and unperformed obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
 - B. all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders’ Agent has not delivered a Step-In Notice.
- (c) At any time after Contracting Authority sends an Indebtedness Notice but before Contracting Authority receives a Step-In Notice, if Contracting Authority discovers amounts that have become owing by Project Co to or any other liabilities or obligations of Project Co to Contracting Authority that have come due but which were not included in the Indebtedness Notice, Contracting Authority shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, Contracting Authority shall not terminate the Project Agreement on grounds:
 - (i) that the Lenders’ Agent has served a Step-In Notice or enforced any Security Document; or

Thunder Bay Correctional Complex Project

- (ii) arising prior to the Step-In Date of which Contracting Authority was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - A. the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - B. the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
 - a) arose prior to the Step-In Date;
 - b) is continuing and capable of being cured; and
 - c) would have entitled Contracting Authority to terminate the Project Agreement; or
 - C. the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) Contracting Authority shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
 - (i) if any amount referred to in Section 7(b)(ii)A has not been paid to Contracting Authority on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)B has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the later of:
 - A. the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; and
 - B. the Step-In Date; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but

such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give Contracting Authority a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an “**Appointed Representative Notice**”) to Contracting Authority of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Contracting Authority Project Documents.
- (d) During the Step-In Period, Contracting Authority shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Contracting Authority Project Documents. Project Co agrees to be bound by all such dealings between Contracting Authority and the Appointed Representative to the same extent as if they had been between Contracting Authority and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a “**Step-Out Notice**”) to Contracting Authority to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to Contracting Authority under the Contracting Authority Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;

Thunder Bay Correctional Complex Project

- (ii) Contracting Authority will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Contracting Authority Project Documents; and
 - (iii) the Appointed Representative and Contracting Authority shall be and hereby are released from all obligations and liabilities to one another under the Contracting Authority Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
- (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to Contracting Authority and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents to a proposed transferee, together with all information reasonably necessary for Contracting Authority to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which Contracting Authority receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) Contracting Authority shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Contracting Authority shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Contracting Authority Project Documents is approved by Contracting Authority as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by Contracting Authority of the Novation Notice and the date of receipt of any additional information requested by Contracting Authority. For greater certainty, if Contracting Authority fails to respond within such period, Contracting Authority shall be deemed not to have approved the proposed transferee.
- (c) Contracting Authority shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Contracting Authority to withhold its approval if:

Thunder Bay Correctional Complex Project

- (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Contracting Authority, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the Contracting Authority Project Documents or have the effect of increasing any liability of Contracting Authority, whether actual or potential.
- (d) If Contracting Authority withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Contracting Authority, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and Contracting Authority will be released from their obligations under the Contracting Authority Project Documents to each other, and the Suitable Substitute and Contracting Authority will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against Contracting Authority under the Contracting Authority Project Documents and the rights of Contracting Authority against Project Co under the Contracting Authority Project Documents will be cancelled, and the Suitable Substitute and Contracting Authority will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - A. an agreement between Contracting Authority and the Suitable Substitute, on substantially the same terms as the Project Agreement; and

Thunder Bay Correctional Complex Project

- B. an agreement among Contracting Authority, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
- (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where Contracting Authority was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
- (v) any subsisting ground for termination by Contracting Authority of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

Contracting Authority shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, Contracting Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step in to and/or novate the Construction Contract and/or the Service Contract in accordance with the Direct Agreements.
- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any

Construction Contract or Service Contract assumed or novated by Contracting Authority pursuant to a Direct Agreement.

- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Contractor and the Service Provider (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract and/or the Service Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Contracting Authority shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or the Construction Contract and/or the Service Contract) from the Construction Contractor or the Service Provider or under the Bond;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor and/or the Service Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor and/or the Service Provider; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor or the Service Provider, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Contracting Authority agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13. PROCEEDING AT RISK AND PROJECT CO DELAY NOTICES

- (a) The Parties acknowledge that Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent of any Proceeding at Risk Matter following the issuance of the Proceeding at Risk Notice delivered pursuant to Section 11.6(a) of the Project Agreement, together with a copy of such notice.
- (b) The Parties acknowledge that, if Contracting Authority delivers notice to Project Co pursuant to Section 20.4(a)(iii) of the Project Agreement, Contracting Authority may, acting reasonably, give notice to the Lenders' Agent that Project Co is failing

to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.

14. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 14.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to Contracting Authority and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the Lenders' Agent, each acting reasonably. Contracting Authority and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the whole or part of this Lenders' Direct Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and Contracting Authority of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Contracting Authority on substantially the same terms as this Lenders' Direct Agreement and Project Co and Contracting Authority shall enter into such new agreement with the assignee. Project Co and Contracting Authority shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

15. NOTICES

(a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders’ Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Lenders’ Direct Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority: [REDACTED]
c/o Ontario Infrastructure and
Lands Corporation:

With a copy to:
[REDACTED]

If to Project Co: [REDACTED]

With a copy to:
[REDACTED]

If to the Lenders’ Agent: [REDACTED]

(b) Any Party to this Lenders’ Direct Agreement may, from time to time, change any of its contact information set forth in Section 15(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.

- (c) Subject to Sections 15(d) and 15(e):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 15.
- (e) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.
- (f) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

16. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Lenders' Direct Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 16.

17. AMENDMENTS

This Lenders' Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Lenders' Direct Agreement.

18. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and

delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

19. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct 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, except as provided in this Lenders' Direct Agreement, of principal and agent.

20. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct 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 Lenders' Direct Agreement.

21. SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any such provision of this Lenders' Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lenders' Direct Agreement as near as possible to its original intent and effect.

22. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

23. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be

treated in all respects as an Ontario contract, without regard to conflict of laws principles.

- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

24. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

25. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

26. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

27. COUNTERPARTS

This Lenders' Direct 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

28. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 49 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Lenders’ Direct Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister of
Government and Consumer Services, as
represented by Ontario Infrastructure and
Lands Corporation**

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the corporation.

SCHEDULE 5-1

CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 22 day of April, 2022

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the **MINISTER OF GOVERNMENT AND CONSUMER SERVICES**, as represented by **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**Contracting Authority**”)

- **AND** -

ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

- **AND** -

[REDACTED]

(the “**Construction Contractor**”)

- **AND** -

[REDACTED]

(the “**Construction Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with Contracting Authority.

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

1. DEFINITIONS

In this Construction Contractor’s Direct Agreement, unless the context otherwise requires:

- (a) “**Business Day**” has the meaning given in the Project Agreement.
- (b) “**Construction Contract**” has the meaning given in the Project Agreement.
- (c) “**Construction Contractor**” has the meaning given in the preamble.
- (d) “**Construction Guarantor**” has the meaning given in the preamble.
- (e) “**Contracting Authority**” has the meaning given in the preamble.
- (f) “**Crown**” has the meaning given in the Project Agreement.
- (g) “**Default Notice**” has the meaning given in Section 5(a).
- (h) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (i) “**Lenders**” has the meaning given in the Project Agreement.
- (j) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (k) “**Party**” means Contracting Authority, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means Contracting Authority, the Construction Contractor, the Construction Guarantor and Project Co.
- (l) “**Project**” has the meaning given in the Project Agreement.
- (m) “**Project Agreement**” means the project agreement made on or about the 22nd day of April, 2022 between Contracting Authority and Project Co.
- (n) “**Project Co**” has the meaning given in the preamble.
- (o) “**Step-In Notice**” has the meaning given in Section 6(a).
- (p) “**Substitute**” has the meaning given in Section 6(a).
- (q) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections , Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections , Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without

limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (h) In construing this Construction Contractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Construction Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of

Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to Contracting Authority setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of Contracting Authority receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from Contracting Authority,

provided that if, within such period of 5 Business Days, Contracting Authority agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
 - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of Contracting Authority receiving a Default Notice; or
 - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Construction Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
 - (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Contracting Authority if Contracting

Authority pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;

- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at Contracting Authority 's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Contracting Authority or the Substitute, as applicable, and the Construction Contractor, acceptable to Contracting Authority and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Construction Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
 - (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such

notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.

- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, 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 for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, 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 Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, the Construction Contractor shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Construction Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

9. CONSTRUCTION GUARANTOR AS PARTY

The Construction Guarantor agrees with Contracting Authority that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Construction Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Construction Contractor's Direct Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

Thunder Bay Correctional Complex Project

If to Contracting Authority: [REDACTED]
c/o Ontario Infrastructure and
Lands Corporation:

With a copy to:

[REDACTED]

If to Project Co: [REDACTED]

With a copy to:

[REDACTED]

If to the Construction Contractor: [REDACTED]

With a copy to:

[REDACTED]

If to the Construction Guarantor: [REDACTED]

With a copy to:

[REDACTED]

(b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).

(c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

(d) Subject to Sections 11(e), 11(f) and 11(g):

- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

12. AMENDMENTS

This Construction Contractor's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Construction Contractor's Direct Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Construction Contractor's Direct 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, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's Direct 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 Construction Contractor's Direct Agreement.

16. SEVERABILITY

Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Construction Contractor's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor's Direct Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Construction Guarantor in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and the Construction Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Construction Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Construction Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

22. COUNTERPARTS

This Construction Contractor's Direct 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Construction Contractor’s Direct Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister of
Government and Consumer Services, as
represented by Ontario Infrastructure and
Lands Corporation**

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____
Name: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

SCHEDULE 5-2

SERVICE PROVIDER’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 22 day of April, 2022

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the **Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation**, a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c.9, Schedule 32, as amended

(“**Contracting Authority**”)

- **AND** -

ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

- **AND** -

[REDACTED]

(the “**Service Provider**”)

- **AND** -

[REDACTED]

(the “**Service Guarantor**”)]

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Service Provider and the Service Guarantor to enter into, this Service Provider’s Direct Agreement with Contracting Authority.
- B. Project Co and the Service Provider have entered into the Service Contract, which requires the Service Provider and the Service Guarantor to enter into this Service Provider’s Direct Agreement with Contracting Authority.

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

1. DEFINITIONS

In this Service Provider’s Direct Agreement, unless the context otherwise requires:

- (a) “**Business Day**” has the meaning given in the Project Agreement.
- (b) “**Contracting Authority**” has the meaning given in the preamble.
- (c) “**Default Notice**” has the meaning given in Section 5(a).
- (d) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (e) “**Lenders**” has the meaning given in the Project Agreement.
- (f) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (g) “**Party**” means Contracting Authority, the Service Provider, the Service Guarantor or Project Co, and “**Parties**” means Contracting Authority, the Service Provider, the Service Guarantor and Project Co.
- (h) “**Project**” has the meaning given in the Project Agreement.
- (i) “**Project Agreement**” means the project agreement made on or about the 22nd day of April, 2022 between Contracting Authority and Project Co.
- (j) “**Project Co**” has the meaning given in the preamble.
- (k) “**Project Co Services**” has the meaning given in the Project Agreement.
- (l) “**Service Contract**” has the meaning given in the Project Agreement.
- (m) “**Service Guarantor**” has the meaning given in the preamble.
- (n) “**Service Provider**” has the meaning given in the preamble.
- (o) “**Step-In Notice**” has the meaning given in Section 6(a).
- (p) “**Substitute**” has the meaning given in Section 6(a).

2. INTERPRETATION

This Service Provider’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Service Provider’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Service Provider’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Service Provider’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections , Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections , Clauses, Paragraphs, Subparagraphs, or divisions of this Service Provider’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Service Provider’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Service Provider’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Service Provider’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Service Provider’s Direct Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the

construction of this Service Provider’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Service Provider’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement, the Project Agreement and the Service Contract, this Service Provider’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Service Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Service Provider’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Service Provider shall provide a written copy of all such amendments, modifications or

departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Service Contract.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Service Contract that may give the Service Provider a right to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder, then the Service Provider shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY SERVICE PROVIDER WITHOUT DEFAULT NOTICE

The Service Provider shall not exercise any right it may have to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder unless:

- (a) the Service Provider first delivers a written notice (a “**Default Notice**”) to Contracting Authority setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder; and
- (b) within the period ending 30 days after the Service Provider notifies Contracting Authority of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of Contracting Authority receiving Default Notice or the expiry of the applicable cure period under the Service Contract:
 - (i) the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder have not been remedied; and
 - (ii) the Service Provider has not received a Step-In Notice from Contracting Authority,

provided that, until such time as Contracting Authority gives the Service Provider a notice that Contracting Authority will not be exercising its step-in rights, Contracting Authority shall pay the Service Provider's reasonable costs of continued performance.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:

- (i) within the period referred to in Section 5(b); or
- (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Service Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Service Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Service Contract.

- (b) Subject to Section 6(d), upon receipt by the Service Provider of a Step-In Notice:
 - (i) Project Co and the Service Provider will be deemed to be released from their existing and future obligations under the Service Contract to each other (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Service Provider under the Service Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Service Provider to Contracting Authority if Contracting Authority pays for the Service Provider's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Service Provider to be performed, observed or carried out by the Service Provider as contained in, referred to, or inferred from the Service Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Service Provider shall cause such assignment, novation or grant on substantially the same terms

and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at Contracting Authority's request, the Service Provider shall enter into, and shall cause the Service Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Contracting Authority or the Substitute, as applicable, and the Service Provider, acceptable to Contracting Authority and the Service Provider, each acting reasonably, on substantially the same terms as the Service Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Service Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Service Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Service Provider receives a Step-In Notice, the Service Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Service Contract that it is or has validly exercised those step-in rights. If the Service Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Service Provider has terminated the Service Contract or treated it as having been repudiated by Project Co or discontinued the Service Provider's performance thereunder in accordance with the terms of this Service Provider's Direct Agreement, the Service Provider agrees that the Service Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Service Provider's reasonable costs for re-commencing the obligations it has under the Service

Contract and the Service Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Service Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. SERVICE PROVIDER LIABILITY

- (a) The liability of the Service Provider hereunder shall not be modified, released, 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 for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry;
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, 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 Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which the Service Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, the Service Provider shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Service Contract, and the Service Provider shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Service Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Service Provider shall not be in breach of the Service Contract by complying with its obligations hereunder.

9. SERVICE GUARANTOR AS PARTY

The Service Guarantor agrees with Contracting Authority that the Service Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Service Provider of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Service Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Service Guarantor enters into this Service Provider's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Service Provider’s Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Service Provider of such assignment or disposition.
- (c) The Service Provider shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement, except as may be permitted under the Service Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Service Provider’s Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Service Provider’s Direct Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority: [REDACTED]
c/o Ontario Infrastructure and
Lands Corporation:

With a copy to:

[REDACTED]

If to Project Co: [REDACTED]

With a copy to:

[REDACTED]

Thunder Bay Correctional Complex Project

If to the Service Provider: [REDACTED]

With a copy to:

[REDACTED]

If to the Service Guarantor: [REDACTED]

With a copy to:

[REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic transmission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Service Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business

Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

12. AMENDMENTS

This Service Provider's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Service Provider's Direct Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Service Provider's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Service Provider's Direct 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, except as provided in this Service Provider's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Service Provider's Direct Agreement, this Service Provider's Direct 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 Service Provider's Direct Agreement.

16. SEVERABILITY

Each provision of this Service Provider’s Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Service Provider’s Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Service Provider’s Direct Agreement. If any such provision of this Service Provider’s Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Service Provider’s Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Service Provider’s Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Service Provider’s Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Service Provider’s Direct Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario) hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Service Provider’s Direct Agreement and Project Co, the Service Provider and the Service Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Service Provider and the Service Guarantor in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Service Provider and the Service Guarantor in writing of any designation hereunder. The rights and obligations of the parties to Service Provider’s Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Service Provider and the Service Guarantor

acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Service Provider’s Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Service Provider’s Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s’en declare satisfaite.

22. COUNTERPARTS

This Service Provider’s Direct 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Service Provider’s Direct Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister of
Government and Consumer Services, as
represented by Ontario Infrastructure and
Lands Corporation**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 22 day of April, 2022

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c.9, Schedule 32, as amended

(“**Contracting Authority**”)

AND:

ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Independent Certifier**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual covenants and agreements of the PA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** means any change to the Certification Services.
 - (iii) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services, including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (iv) **“Fee”** means the fees payable by Contracting Authority and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.

- (v) “**Hourly Rate**” means the rate charged by each of the Independent Certifier personnel per hour as listed in Appendix B to this Independent Certifier Agreement for Other Advice, including any services required to provide additional work.
- (vi) “**Independent Certifier**” has the meaning given to it in the preamble.
- (vii) “**Intellectual Property**” means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (viii) “**Other Advice**” has the meaning given in Section (v) of Appendix A to this Independent Certifier Agreement.
- (ix) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (x) “**Project Agreement**” means that certain project agreement made on or about the date hereof between Contracting Authority and Project Co with respect to the design, construction, financing and maintenance of the Facility.
- (xi) “**Total Fixed Fee**” means the Fee for all Certification Services other than for Other Advice, which shall not exceed the amount specified in Appendix B to this Independent Certifier Agreement.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

Thunder Bay Correctional Complex Project

- (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
- (vii) words denoting any gender include all genders;
- (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (ix) a reference to “\$” is to Canadian currency;
- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
- (xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

Thunder Bay Correctional Complex Project

- (d) The Independent Certifier hereby agrees to submit to a Security Clearance Check in accordance with Schedule 7 – Security Clearance Check Requirements to the Project Agreement.
- (e) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
 - (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.

Thunder Bay Correctional Complex Project

- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
 - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
 - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
 - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the Facility, the Existing Facilities and the Site including restrictions on any such access or protocols that are required; and

- (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.

Thunder Bay Correctional Complex Project

- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable facility of more than 250,000 square feet;
 - (iii) have an understanding of the appropriate CSA standards related to commissioning for correctional facilities, as well as other applicable standards such as ASHRAE and NACBB; and
 - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Agreement and the Project Agreement, including not only the start-up procedures but also the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish Contracting Authority with evidence satisfactory to Contracting Authority of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to certify Construction Period Payments and to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Contracting Authority Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or Contracting Authority, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, the Facility, the Existing Facilities or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Facility, the Existing Facilities and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Facility, the Existing Facilities and the Works; and
 - (iii) not causing any damage to the Site, the Facility, the Existing Facilities or the Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN

5.1 Certification Quality Plan

- (a) The Independent Certifier must:
 - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Contracting Authority Representative and the Project Co Representative;
 - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
 - (iii) if satisfactory to each of the Contracting Authority Representative and the Project Co Representative, implement such certification quality plan; and
 - (iv) if not satisfactory to each of the Contracting Authority Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Contracting Authority Representative and the Project Co Representative, and implement it if satisfactory to each of the Contracting Authority Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the Contracting Authority Representative or the Project Co Representative.

Thunder Bay Correctional Complex Project

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier;
 - (ii) where any of the events specified in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred in respect of any IC Representative unless (i) any such IC Representative's employment or engagement by the Independent Certifier is immediately terminated, and evidence of termination thereof has been provided to Contracting Authority in writing within five (5) Business Days of the occurrence of any of the events described in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement in respect of such IC Representative; or (ii) the Independent Certifier has satisfied Contracting Authority, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved or engaged in providing any of the Certification Services; or
 - (iii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
- (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(iii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Sections 6.1(a)(i) or 6.1(a)(ii).

6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

Thunder Bay Correctional Complex Project

7. INSURANCE AND LIABILITY

7.1 Independent Certifier’s Professional Indemnity Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers’ Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the invoicing process specified in Section D of Appendix B.

Thunder Bay Correctional Complex Project

- (b) The obligation of each PA Party to pay to the Independent Certifier one-half of the Fee is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overhead and profit, all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), and all other overhead including any fees or other charges required by law to perform the Certification Services, subject to Appendix B to this Schedule 6.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Contracting Authority Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The Contracting Authority Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the Contracting Authority Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the Contracting Authority Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(iii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Contracting Authority Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the completion of the Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Failure to Satisfy Security Clearance Check Requirements

- (a) Contracting Authority may, in its sole discretion, terminate this Independent Certifier Agreement and the appointment of the Independent Certifier for the Project Agreement where any of the events specified in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred in respect of any of IC's Representatives unless (i) any such IC's Representative's employment or engagement by the Independent Certifier is immediately terminated, and evidence of termination thereof has been provided to Contracting Authority in writing within five (5) Business Days of the occurrence of any of the events described in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement; or (ii) the Independent Certifier has satisfied Contracting Authority, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved or engaged in providing any of the Certification Services.

10.5 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
 - (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.6 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.7 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.6, the Independent Certifier will:
 - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.8 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4, 10.5 or 10.6 or otherwise), the Independent Certifier must:

- (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
- (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
- (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.9 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.10 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.7, 10.8, 10.9, 11, 12.7, 12.8 and this Section 10.10 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
 - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);

- (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.
- (d) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix E – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier 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 Independent Certifier Agreement.

Thunder Bay Correctional Complex Project

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

12.4 Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Independent Certifier Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Independent Certifier Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority: **[REDACTED]**
 c/o Ontario Infrastructure
 and Lands Corporation: **[REDACTED]**

With a copy to:

[REDACTED]

If to Project Co: [REDACTED]

With a copy to:

[REDACTED]

If to the Independent Certifier: [REDACTED]

With a copy to:

[REDACTED]

- (b) Where any notice is provided or submitted to a party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

Thunder Bay Correctional Complex Project

- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario) hereby irrevocably attorn to the exclusive jurisdiction of such courts.

12.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified

Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

12.8 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree

Thunder Bay Correctional Complex Project

that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

12.11 Severability

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Independent Certifier Agreement. If any such provision of this Independent Certifier Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Independent Certifier Agreement as near as possible to its original intent and effect.

12.12 Enurement

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

12.13 Counterparts

- (a) This Independent Certifier 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister of
Government and Consumer Services, as
represented by Ontario Infrastructure and
Lands Corporation**

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I/We have authority to bind the corporation.

APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall do the following:

- (a) Receive and monitor the progress of drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (b) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences, Approvals and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profiles provided to the Independent Certifier pursuant to the Project Agreement.
- (c) Receive, monitor and assess progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (d) Review information relating to Delay Events and Compensation Events.
- (e) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (f) In accordance with Section 11.1(b) of the Project Agreement, attend all meetings of, and participate, as necessary, in the activities of, the Works Committee.
- (g) Conduct regular inspections of the Works, at a minimum, on a monthly basis or more regularly as deemed necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement, including the Works Schedule. Report on the observations, findings and potential risks to certification as a result of such regular inspections.
- (h) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
- (i) Attend all Commissioning Team meetings and monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
- (j) Monitor and regularly report on the requirements, progress and results of all Project Co Commissioning and Contracting Authority Commissioning.

Thunder Bay Correctional Complex Project

- (k) Review and monitor the process of installation of all Equipment, SolGen Equipment and Existing Equipment in accordance with the Project Agreement, and provide a report to the PA Parties identifying any damage to the Facility which has been caused as a result of such installation of Equipment, SolGen Equipment and Existing Equipment.
- (l) In implementing the Certification Services, identify any risks that may impede the issuance of the applicable certificate and, accordingly immediately inform the PA Parties of such risks. Following the identification of any risks, monitor and report to the PA Parties on the progress until such risks are fully resolved.
- (m) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, (i) with respect to the Substantial Completion Certificate, perform the activities set out in Section 24.4(c) of the Project Agreement, and (ii) with respect to each of the Substantial Completion Certificate and the Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (n) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (l) of this Appendix A until the issuance of the applicable certificate.
- (o) In consultation with and being informed by the respective views of Project Co and Contracting Authority other than in respect of Section (o)(iii) of this Appendix A:
 - (i) prepare, based on the Independent Certifier’s review of the Works, the Minor Deficiencies List and Seasonal Works List in accordance with Sections 24.8(a) to (c) of the Project Agreement, which will include:
 - (A) an estimate of the cost for Contracting Authority to complete and rectify the Minor Deficiencies and the Seasonal Works; and
 - (B) the time for Project Co to complete and rectify the Minor Deficiencies and the Seasonal Works;
 - (C) a schedule for the completion and rectification of the Minor Deficiencies and Seasonal Works;
 - (ii) amend the Minor Deficiencies List and Seasonal Works List in accordance with Sections 24.8(e) and (f) of the Project Agreement, which will specify a rectification time for each newly added Minor Deficiency that is no greater than 10 Business

Thunder Bay Correctional Complex Project

Days from the date of the issuance of such amended Minor Deficiencies List or Seasonal Works List, as applicable, or such longer time period as agreed by Contracting Authority and Project Co; and

- (iii) certify (i) the completion and rectification of Minor Deficiencies in accordance with Section 24.10(b) and Section 24.10(d) of the Project Agreement, and (ii) the completion of the Seasonal Works in accordance with Section 24.10(e) of the Project Agreement, taking into consideration Contracting Authority’s opinion as to whether such Minor Deficiencies have been completed and rectified and as to whether the Seasonal Works have been completed.
- (p) Prior to any certification, consider the views and comments of both Project Co and Contracting Authority in relation to the satisfaction of the conditions for certification.
- (q) Prior to Substantial Completion, review and monitor Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amounts.
- (r) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against Contracting Authority budgets and the Cash Allowance Amounts.
- (s) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
- (t) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (u) Provide periodic reports to the PA Parties, copying Infrastructure Ontario, as follows:
 - (i) a progress report within fifteen Business Days after each month’s end or as otherwise agreed by the PA Parties (the “**Monthly Report**”), which shall be based on the Independent Certifier’s review of the Works and shall include an assessment of the progress of the Works compared against the Works Schedule; and,
 - (ii) accompanying the Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**Quarterly Report**”) for the quarters ending June 30th, September 30th, December 31st and March 31st respectively, in substantially the form as that in Appendix D and that contains the following information confirmed to the best of the Independent Certifier’s professional knowledge and judgment:
 - (A) the extent (expressed as a percentage) of completion of the Works as of the date of the Quarterly Report;

Thunder Bay Correctional Complex Project

- (B) the value of the Works completed as of the date of the Quarterly Report;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the end of the applicable quarter and for the next four quarters; and
 - (D) the forecasted value of the Works anticipated to be completed as of the end of the applicable quarter and for the next four quarters.
- (v) Provide advice on other matters that may arise that both PA Parties may jointly require (“**Other Advice**”).
- (w) Provide the Certification Services with respect to Construction Period Payments as set out in Schedule 19 – Construction Period Payments.
- (x) Prepare the Substantial Completion Deliverables List pursuant to Section 24.7(d) of the Project Agreement and, if applicable, amend such list pursuant to Section 24.7(e) of the Project Agreement.

APPENDIX B

INDEPENDENT CERTIFIER FEE

[REDACTED]

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

[REDACTED]

APPENDIX D

FORM OF QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER’S LETTERHEAD]

[date]

[REDACTED]

and to:

[REDACTED]

Dear [●] and [●]:

This report, for the quarter ending [●], is delivered to you pursuant to Section (t)(ii) of Appendix A of the Independent Certifier Agreement between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Government and Consumer Services as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”), EllisDon Infrastructure TBCC General Partnership and us dated April [●], 2022 (the “**Agreement**”). Terms not otherwise defined herein have the meaning ascribed to them in the Agreement.

All values stated herein are based on the construction cost of the Works and are exclusive of HST. This report has taken into account the following information: **[insert particulars of sources of information (e.g., works reports, site visits) used to prepare the report]**.

Based on our analysis of the foregoing, we confirm the following to the best of our professional knowledge and judgment:

- As of the date hereof, the value of the Works is \$[●] and the Works are [●]% complete.
- At the end of this quarter, the estimated value of the Works will be \$[●] and the Works are forecasted to be [●]% complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

	[quarter end date]	[quarter end date]	[quarter end date]	[quarter end date]
\$	%			

We have prepared this report for the specific use of Contracting Authority, EllisDon Infrastructure TBCC General Partnership and the Province, as represented by its agent, the Ontario Infrastructure and Lands Corporation. This letter is not intended for general circulation,

Thunder Bay Correctional Complex Project

publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

[Name and Signature of Independent Certifier]

APPENDIX E

CONDUCT OF CLAIMS

This Appendix E shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix E, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both Contracting Authority and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

Thunder Bay Correctional Complex Project

- (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the

claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:

- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (7) Any person taking any of the steps contemplated by this Appendix E shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

SCHEDULE 7

SECURITY CLEARANCE CHECK REQUIREMENTS

1. Security Procedures and Compliance

- (a) In order to prevent persons who pose a security risk from gaining access to sensitive information or otherwise compromising the public services in the Province or the security or integrity of the Site, the Facility and/or the Existing Facilities, Project Co shall, at its sole cost and expense (except as otherwise specifically provided in Section 2), comply with the requirements of Section 2 and ensure that all Designated Project Co Employees comply with the requirements of Section 2.

2. Security Clearance Check

- (a) Except as otherwise agreed by the Parties, Project Co shall, and shall cause each Project Co Party that is not an individual to, submit to a Security Clearance Check on or prior to each Security Clearance Check Date, including pursuant to Section 2(k).
- (b) Except as otherwise agreed by the Parties, Project Co shall, and shall cause each Designated Project Co Employee to submit to a Security Clearance Check prior to such Designated Project Co Employee entering on to the Site, the Existing Facilities or the Facility to perform Project Operations, and thereafter on or prior to each Security Clearance Check Date.
- (c) In its sole discretion, Contracting Authority may prescribe additional or alternative security or other background checks that are to be conducted with respect to any one or more Designated Project Co Employees. Without limiting the generality of the foregoing, Contracting Authority may require a check under the Security Screening Program operated by CSIS for any Designated Project Co Employee. The cost of such CSIS check and any other security or background checks (other than the Security Clearance Check) will be borne by Contracting Authority. Notwithstanding Sections 2(a) and (b), Contracting Authority may in its sole discretion:
- (i) direct Project Co to submit the information relating to the Designated Project Co Employees required in order for SolGen or MGCS to carry out the security or background checks on the Designated Project Co Employees itself and not require Project Co to carry out the security or background checks; or
 - (ii) carry out a security or background check on any Project Co Party or Designated Project Co Employee.

If SolGen or MGCS elects to carry out a security or background check pursuant to this Section 2(c), Project Co shall, and shall cause all Project Co Parties and Designated Project Co Employees to, cooperate with SolGen or MGCS for the purpose of carrying out the security or background check and to obtain all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority, SolGen and MGCS.

- (d) Notwithstanding Sections 2(b) and 2(c), in an emergency situation only (as determined by Contracting Authority, in its sole discretion), a Designated Project Co Employee who has not submitted to a security or background check in accordance with Sections 2(b) and/or 2(c) may be permitted access to the Site, the Existing Facility and/or in the Facility provided that such person, while on the Site or in the Existing Facility or the Facility, is accompanied at all times by a Designated Project Co Employee who has submitted to a Security Clearance Check in accordance with Section 2(b) and has submitted to the additional or alternative security or other background checks set forth in Section 2(c), if such checks were required by Contracting Authority.
- (e) Contracting Authority may require the renewal of the security or background checks provided for under Sections 2(a), 2(b) and 2(c) with respect to Project Co, a Project Co Party that is not an individual, any Designated Project Co Employee, any class of Designated Project Co Employee or all Designated Project Co Employees, at such intervals as Contracting Authority may reasonably direct. The cost of renewed security and background checks provided for under Sections 2(a) or 2(b) shall be borne by Project Co. The cost of renewed security and background checks provided for under Section 2(c) shall be born by Contracting Authority.
- (f) Except as required under Section 2(a), 2(b), 2(c) or 2(e), no security or background check shall be required with respect to any other person employed, engaged, hired or retained by Project Co or a Project Co Party in respect of the Project.
- (g) Project Co shall, at its cost and expense, obtain, maintain and renew, as applicable, written consent, on a prescribed Government of Ontario or Ontario Provincial Police form, from each Designated Project Co Employee, authorizing the conduct of a security or background check pursuant to Sections 2(a), 2(b), 2(c) or 2(e).
- (h) Every person who is employed, engaged, hired or retained by Project Co or a Project Co Party with respect to:
 - (i) the movement of staff or equipment into, out of, or within the Existing Facilities or the Facility:

- (ii) the installation, testing or repair of computer, phone or other communications or information technology wiring, cables or equipment; or
- (iii) the installation, testing or repair of security features of the Facility, including all security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras, or alarms,

shall be bonded.

- (i) Subject to Applicable Law, Contracting Authority may, in its sole discretion, direct that any person shall not be:
 - (i) employed, engaged, hired or retained by Project Co or any Project Co Party with respect to the performance of any of Project Co's responsibilities under the Project Agreement; or
 - (ii) otherwise have access to the Site, the Existing Facilities or the Facility, where such person,
 - (iii) refuses to submit to a security or background check under Sections 2(a), 2(b), 2(c) or 2(e) or fails to provide the required consent to permit such a check to be conducted;
 - (iv) has been refused a Level I security clearance from CSIS, in the event that Contracting Authority has directed that such a security clearance is required;
 - (v) has been charged with or convicted of a Relevant Conviction; or
 - (vi) is otherwise considered to constitute a security risk in the opinion of Contracting Authority, acting reasonably, including with respect to the proper and impartial performance of the Project Operations, the safety and well-being of persons located in or at the Site and/or at or in the Existing Facilities or the Facility, the reputation of, and public confidence in, the Province, the security of revenue, equipment or any other property of the Province, and the confidentiality and integrity of the Confidential Information, and/or the Personal Information.

For greater certainty, Contracting Authority's discretion under this Section 2(i) shall be interpreted to be absolute and unrestricted, subject to Applicable Law.

- (j) Where Contracting Authority has exercised its rights under Section 2(i), the affected person may request,

- (i) that a further inquiry be made to determine whether a subsequent pardon or acquittal on appeal has not been properly recorded in the records maintained by CPIC; or
- (ii) that the alleged record be verified by way of a fingerprint search through CPIC,

and Contracting Authority shall withdraw its objection with respect to any such person who is exonerated or vindicated as a result of that inquiry or verification.

- (k) Where a person liable to a security or background check under Sections 2(a), 2(c) or 2(e) is not an individual, a security or background check may be required of each of such person's partners, trustees, members, officers, or directors (the "**Individual Representatives**") provided that Contracting Authority will only require a security or background check if:
 - (i) the Individual Representative has or will have access to the Site, the Facility or the Existing Facilities; or
 - (ii) the Individual Representative has or will have access to Confidential Information of Contracting Authority or a Contracting Authority Party.

Prior to Commercial Close, Project Co shall provide Contracting Authority with a list of Individual Representatives that are liable to a security or background check, pursuant to this Section 2(k), which list shall include a description of the Individual Representative's role on the Project and, if the individual has, or will have, access to Confidential Information of Contracting Authority or a Contracting Authority Party, a brief description of such Confidential Information, and shall update such list from time to time as Individual Representatives become liable to a security or background check.

3. Change in Security Clearance Check Requirements

- (a) Contracting Authority shall notify Project Co of any proposed change to the Security Clearance Check Requirements as soon as practicable (and in any event prior to such change taking effect). Contracting Authority shall consult with Project Co about such changes, but the final decision shall be Contracting Authority's.
- (b) Any change in Security Clearance Check Requirements from those in existence on Commercial Close shall, to the extent such change materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

Thunder Bay Correctional Complex Project

- (c) Contracting Authority may, in its sole discretion, notify Project Co that Project Co shall not be obliged, for the period of time specified in such notice, to comply with any change to any of the Security Clearance Check Requirements and that Project Co should continue to comply with Security Clearance Check Requirements in effect prior to any change.

4. Effect of Convictions

- (a) Project Co (as to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who:
 - (i) discloses that he or she has been arrested or detained during the Project Term;
 - (ii) discloses that he or she has been detained for immigration purposes during the Project Term;
 - (iii) discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a security or background check under Section 2(a), 2(b), 2(c) or 2(e); or
 - (iv) discloses that he or she has been charged with an offence that could lead to a Relevant Conviction,

is allowed access to the Site, the Existing Facilities and/or the Facility or is allowed to perform any of the Project Operations, without the prior written consent of Contracting Authority, in its sole discretion.

5. Notification of Detention, Incarceration or Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept advised at all times of any person employed, engaged, hired or retained by Project Co or any Project Co Party, who, subsequent to being hired or the commencement of employment, engagement or retention:
 - (i) has been arrested or detained during the Project Term;
 - (ii) has been detained for immigration purposes;
 - (iii) receives a Relevant Conviction; or
 - (iv) is charged with an offence that could lead to a Relevant Conviction

in all cases of which Project Co or a Project Co Party is aware or ought to be aware. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable

Law or otherwise authorizing the disclosure of such information to Contracting Authority.

SCHEDULE 8

[INTENTIONALLY DELETED]

**SCHEDULE 9
KEY INDIVIDUALS**

A. Key Individuals - Works

Project Co Party	Position/Function	Name and Contact Information
Design Team	Lead Design Architect	[REDACTED]
Design Team	Landscape Architect	[REDACTED]
Design Team	Lead Mechanical Engineer	[REDACTED]
Design Team	Lead Electrical Engineer	[REDACTED]
Design Team	Lead Structural Engineer	[REDACTED]
Design Team	Information and Communication Technology Designer	[REDACTED]
Design Team	Sustainability and Energy Efficiency Consultant	[REDACTED]
Design Team	Civil Engineer	[REDACTED]
Design Team	Interior Designer	[REDACTED]
Design Team	Accessibility Advisor	[REDACTED]
Design Team	Indigenous Advisor	[REDACTED]
Design Team	Indigenous Engagement Advisor	[REDACTED]
Design Team	Energy Modeller	[REDACTED]
Design Team	Integrated Electronic Security Systems Designer	[REDACTED]
Design Team	Security Systems Designer	[REDACTED]
Design Team	Physical Security Designer	[REDACTED]
Design Team	Audio Visual Consultant	[REDACTED]
Design Team	Acoustical Design and Vibration Consultant	[REDACTED]
Design Team	Building Enclosure Consultant	[REDACTED]

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Thunder Bay Correctional Complex Project

Project Co Party	Position/Function	Name and Contact Information
Construction Contractor	Design Manager	[REDACTED]
Construction Contractor	Project Manager	[REDACTED]
Construction Contractor	Site Supervisor	[REDACTED]
Construction Contractor	Construction Manager	[REDACTED]
Construction Contractor	Construction Quality Performance Manager	[REDACTED]
Construction Contractor	Architectural Superintendent	[REDACTED]
Construction Contractor	Structural Superintendent	[REDACTED]
Construction Contractor	Mechanical Superintendent	[REDACTED]
Construction Contractor	Electrical Superintendent	[REDACTED]
Construction Contractor	Security Systems Integrator	[REDACTED]
Construction Contractor	Technology Systems Integrator	[REDACTED]
Construction Contractor	Commissioning Coordinator	[REDACTED]
Construction Contractor	Building Systems Integrator	[REDACTED]
Construction Contractor	Civil Site Works Superintendent	[REDACTED]
Construction Contractor	Building Enclosure Superintendent	[REDACTED]
Construction Contractor	Health and Safety Officer	[REDACTED]
Project Co	Project Co Project Manager	[REDACTED]
Project Co	Project Co Representative	[REDACTED]
Project Co	Equipment Coordinator	[REDACTED]
Project Co	Project Co Commissioning Coordinator	[REDACTED]
Project Co	Transition Advisor	[REDACTED]
Project Co	Equipment Procurement Manager	[REDACTED]
Project Co	Project Scheduler	[REDACTED]
Project Co	Communications Director	[REDACTED]

B. Key Individuals – Services

Project Co Party	Position/Function	Name and Contact Information
Service Provider	Site General Manager	[REDACTED]
Service Provider	Operations Manager	[REDACTED]
Service Provider	Health and Safety Officer	[REDACTED]
Service Provider	Performance and Quality Manager	[REDACTED]
Service Provider	Energy Management Manager	[REDACTED]
Service Provider	Security Systems Manager	[REDACTED]
Service Provider	Service Provider Representative (On-site Representative)	[REDACTED]
Service Provider	Communications Director	[REDACTED]
Service Provider	Operational Start Up and Mobilization Manager	[REDACTED]

SCHEDULE 10**REVIEW PROCEDURE****PART A – WORKS PHASE****1. WORKS SUBMITTALS**

- 1.1 The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure prior to Substantial Completion or after Substantial Completion in respect of the completion of Minor Deficiencies and Seasonal Works, and the rectification of any Works, the Facility or any part thereof as required pursuant to Section 18.1(b) of the Project Agreement, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in Part A of this Schedule 10).

2. SCHEDULE FOR WORKS SUBMITTALS

- 2.1 Project Co shall provide for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow for a sufficient Contracting Authority Review Period for each Works Submittal taking into account both the resources necessary to be available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule or current Recovery Schedule, as applicable.
- 2.2 In scheduling Review Procedure Activities and in the performance of the Works, Project Co shall allow adequate time prior to performing the Works that are the subject of the Review Procedure Activities, for the Review Procedure Activities and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with this Schedule 10. Project Co shall schedule all Review Procedure Activities to maintain a buffer period between a Contracting Authority Review Period and the subsequent Works Activity.
- 2.3 Project Co shall include in the Project Schedules the Contracting Authority Review Period duration and sequencing logic as defined in the Project Agreement.
- 2.4 Project Co shall allow for a minimum Contracting Authority Review Period of:

- (a) 15 Business Days following receipt thereof for all Design Development Submittals, unless otherwise indicated in this list;
- (b) 15 Business Days following receipt thereof for all Construction Document Submittals, unless otherwise indicated in this list;
- (c) 15 Business Days following receipt thereof for the first Draft Works Schedules;
- (d) 5 Business Days following receipt thereof for any subsequent Draft Works Schedule;
- (e) 15 Business Days following receipt thereof for any other Project Schedules or related reports; and
- (f) 15 Business Days following receipt thereof for Quality Plans, and 10 Business Days following receipt thereof for all other Works Submittals,

or such longer period as the Parties may agree, provided that if Project Co has made major changes to the content, grouping or quantity of Works Submittals, or the Works Submittal was not submitted to Contracting Authority on the date indicated in Current Look-ahead Schedule, such period of time shall be increased by Project Co, acting reasonably, taking into account the factors set forth in this Section 2.

- 2.5 Project Co shall include the relevant activity relationships in the Project Schedules to indicate the Works Activities dependent on the specific Contracting Authority Review Period for a specific Works Submittal.
- 2.6 Project Co shall submit all Works Submittals to Contracting Authority in accordance with the Current Look-ahead Schedule, and the Contracting Authority Representative or the Contracting Authority Design Team, as applicable, shall review and respond to each Works Submittal in accordance with the Contracting Authority review time periods specified on the Current Look-ahead Schedule or as otherwise agreed to between the Parties.
- 2.7 If, at any time, any or all of:
- (a) the Current Look-ahead Schedule is deemed null and void pursuant to Section 12.1 of Schedule 12 – Works Scheduling Requirements;
 - (b) Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Works Schedule and the Current Look-ahead Schedule; or
 - (c) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Current Look-ahead Schedule, such that the Contracting Authority Representative or the Contracting Authority Design Team, as applicable, cannot review the Works Submittals or Works Submittals within the time permitted in the Current Look-ahead Schedule;

then the Contracting Authority Representative shall, within 5 Business Days of receipt of such Works Submittal or Works Submittals, provide Project Co with an estimate of the time necessary for processing such Works Submittal or Works Submittals.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue 3 printed copies of all Works Submittals to Contracting Authority, together with an electronic copy uploaded to the on-line (web-based) project management software system specified by Contracting Authority, in a format agreed by the Parties, acting reasonably, and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 3.3 All Works Submittals shall be in English.
- 3.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 3.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.
- 3.7 When Project Co submits a Correctional Services Functionality Report, Project Co shall specifically identify all elements of Correctional Services Functionality, including where applicable, references to the Output Specifications.
- 3.8 All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
 - (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Works Submittal;

Thunder Bay Correctional Complex Project

- (e) the Works Submittal history showing date, delivery information, log number of all previous submissions, previous assigned comments by Contracting Authority and Project Co’s response to such comments to that Works Submittal; and
 - (f) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.9 No fewer than ten (10) Business Days prior to the scheduled date of submission of each Works Submittal, the Project Co Representative shall meet with the Contracting Authority Representative and the Contracting Authority Design Team to review the progress and validate the content of the Works Submittal scheduled to be submitted. The Contracting Authority Representative, acting reasonably, may adjust the scheduled date of the submission of the Works Submittal if, in the reasonable opinion of the Contracting Authority Representative, such Works Submittal does not or is unlikely to meet the requirements of the Project Agreement by the date it is scheduled to be submitted.
- 3.10 If a Proposal Part corresponds to a Works Submittal, then Project Co shall ensure that its initial submission of such Works Submittal, in accordance with this Schedule 10, is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not:
- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Works Submittal in accordance with this Schedule 10; or
 - (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Works Submittal in accordance with this Schedule 10.

4. COMMENTS

- 4.1 The Contracting Authority Design Team shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.6 of this Schedule 10. The Contracting Authority Design Team shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 4 comments:
- (a) “NO COMMENT”;
 - (b) “MINOR NON-CONFORMANCE”;
 - (c) “MAJOR NON-CONFORMANCE”; or
 - (d) “CRITICAL NON-CONFORMANCE”.
- 4.2 The comment “NO COMMENT” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, generally conforms to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittal.

- 4.3 The comment “MINOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, contains any Minor Non-Conformance but does not contain any Major Non-Conformance or Critical Non-Conformance. Project Co shall correct such Works Submittal and shall comply with and implement such Works Submittal after correction, including in accordance with the comments. If the Contracting Authority Design Team assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Design Team no later than twenty (20) Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Design Team, acting reasonably and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Works Submittals and Works, as required to ensure that the Works comply with the Output Specifications and Project Co may be required, at the Contracting Authority Design Team’s discretion, to resubmit the relevant Works Submittals. In such circumstances the Contracting Authority Design Team shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4 The comment “MAJOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, contains any Major Non-Conformance but does not contain any Critical Non-Conformance. The comment “CRITICAL NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, contains any Critical Non-Conformance. Project Co shall correct and re-submit such Works Submittal within 10 Business Days after the comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” has been provided to Project Co, or such longer time period, as determined by the Contracting Authority Design Team, acting reasonably and as set out in writing. The Contracting Authority Design Team will then review such re-submitted Works Submittal and assign a comment to the corrected Works Submittal. The Works Submittal shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a “CRITICAL NON-CONFORMANCE” comment will be a Proceeding at Risk Matter in accordance with Section 11.6(a)(ii) of the Project Agreement.
- 4.5 Where the Contracting Authority Design Team issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Design Team shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Design Team shall meet with the Project Co Representative to discuss the reasons for the comment.

Thunder Bay Correctional Complex Project

- 4.6 If, at any time after assigning any comment to a Works Submittal, the Contracting Authority Design Team or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Contracting Authority Design Team may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Design Team and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 Where a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 4.9 In lieu of returning a Works Submittal, the Contracting Authority Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

5. DISPUTES

- 5.1 If Project Co disputes any comment assigned by the Contracting Authority Design Team to a Works Submittal under this Part A, Project Co shall promptly notify the Contracting Authority Representative, the CDB and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Design Team shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Design Team confirms the original comment, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.2 Notwithstanding the provisions of Section 5.1, the Contracting Authority Design Team may direct that Project Co revise the Works Submittal in accordance with the comment of the Contracting Authority Design Team and proceed to perform and complete the Works on the basis of such revised Works Submittal. For clarity, Project Co may refer such

direction for resolution as a Dispute in accordance with Schedule 27 - Dispute Resolution Procedure.

6. EFFECT OF REVIEW

6.1 Subject to Section 18.6 of this Project Agreement, any review and comment by Contracting Authority or the Contracting Authority Design Team of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under this Project Agreement or exclude or limit Contracting Authority's rights in respect of the Works under this Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

7.1 At any time, the Contracting Authority Design Team may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Design Team and its other advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications. Project Co shall provide the explanation to the Contracting Authority Design Team within 5 Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Design Team.

8. REVISIONS

8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

8.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify

the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.

- 8.4 Project Co shall keep all Design Data current, including a complete set of the most recently issued submittal documents available on site in the construction trailer for use by Contracting Authority and Contracting Authority representatives. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

9. AUDIT OF WORKS SUBMITTAL IMPLEMENTATION

- 9.1 Without limiting any other right under this Project Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the Contracting Authority Design Team of all such corrections and modifications.
- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1, shall be referred to Schedule 27 – Dispute Resolution Procedure for resolution.

10. VARIATIONS

- 10.1 No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2 If, having received comments from the Contracting Authority Design Team on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to Contracting Authority of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Contracting Authority may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with either party may proceed to resolve the matter in accordance with Section 5 including for clarity, the exercise by Contracting Authority of its right under Section 5.2. Subject to the foregoing sentence, any failure by Project Co to notify Contracting Authority in accordance with this Section 10.2 that Project Co considers

compliance with any comments of the Contracting Authority Design Team would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Design Team's comments shall be without cost to Contracting Authority and without any extension of time.

SCHEDULE 10**REVIEW PROCEDURE****PART B – SERVICES PHASE****1. SERVICE SUBMITTALS**

- 1.1 The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by this Project Agreement, other than the Design Development Submittals, the Construction Document Submittals and the Design Data, to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure after Substantial Completion except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Service Submittal**” or “**Service Submittals**” as applicable in Part B of this Schedule 10).
- 1.2 Project Co shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Service Submittal.
- 1.3 Project Co shall, in scheduling Service Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Service Submittals, for review of the Service Submittals and for Project Co to make changes to Service Submittals that may be required if comments are received on the Service Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

2. GENERAL REQUIREMENTS FOR SERVICE SUBMITTALS

- 2.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue 3 printed copies of all Service Submittals to Contracting Authority in a format agreed by the Parties, acting reasonably.
- 2.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Service Submittals and the date of receipt and content of all returned Service Submittals and comments thereon.
- 2.3 All Service Submittals shall be in English.
- 2.4 All Service Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.

Thunder Bay Correctional Complex Project

- 2.5 All Service Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Service Submittal and Project Co’s proposed course of action relating to the Service Submittal and the Project Operations that are the subject of the Service Submittal.
- 2.6 All Service Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications.
- 2.7 All Service Submittals shall be clearly identified as a Service Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Service Submittals and for each Service Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Service Submittal;
 - (e) the Service Submittal history showing date and delivery information and/or log number of all previous submissions of that Service Submittal; and
 - (f) identification of any previous Service Submittal superseded by the current Service Submittal.
- 2.8 If a Proposal Part corresponds to a Service Submittal, then Project Co shall ensure that its initial submission of such Service Submittal, in accordance with this Schedule 10, is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not:
- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Service Submittal in accordance with this Schedule 10; or
 - (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Service Submittal in accordance with this Schedule 10.

3. COMMENTS

- 3.1 The Contracting Authority Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 1.2 of this Schedule 10. The Contracting Authority Representative shall return Service Submittals to Project Co and assign one of the following 4 comments:
- (a) “NO COMMENT”;

Thunder Bay Correctional Complex Project

- (b) “MINOR NON-CONFORMANCE”;
 - (c) “MAJOR NON-CONFORMANCE”; or
 - (d) “CRITICAL NON-CONFORMANCE”.
- 3.2 The comment “NO COMMENT” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Service Submittals.
- 3.3 The comment “MINOR NON-CONFORMANCE” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the Contracting Authority Representative’s review. Project Co shall correct these Service Submittals and shall comply with and implement such Service Submittals after correction, including in accordance with the comments. If the Contracting Authority Representative assigns to a Service Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Service Submittal to the Contracting Authority Representative no later than 20 Business Days after the comments have been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably, and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Service Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Service Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit the relevant Service Submittals. In such circumstances the Contracting Authority Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.4 The comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Service Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably, and as set out in writing. The Contracting Authority Representative will then review such re-submitted Service Submittals and assign a comment to the corrected Service Submittal. The Service Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Service Submittal with a “CRITICAL NON-CONFORMANCE” shall be escalated to the Facilities Management Committee.

Thunder Bay Correctional Complex Project

- 3.5 Where the Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Service Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 3.6 If, at any time after assigning any comment to a Service Submittal, the Contracting Authority Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 14 that the revised comment is correct, Project Co shall make all such corrections to the Service Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.7 For the purpose of facilitating and expediting the review and correction of Service Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Service Submittals and any comments thereon.
- 3.8 Where a Service Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Service Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 3.9 In lieu of returning a Service Submittal, the Contracting Authority Representative may by letter notify Project Co of the comment assigned to the Service Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

4. DISPUTES

- 4.1 If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the Contracting Authority Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Service Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.

Thunder Bay Correctional Complex Project

4.2 If after such review by the Contracting Authority Representative Project Co disputes the comment on a Service Submittal, subject to Section 9.1, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

5. EFFECT OF REVIEW

5.1 Any review and comment by Contracting Authority or the Contracting Authority Representative of any Service Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Service Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities under this Project Agreement in respect of matters related to the Service Submittal or exclude or limit Contracting Authority's rights under this Project Agreement in respect of matters related to the Service Submittal.

6. SERVICE SUBMITTAL EXPLANATION

6.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Service Submittals, including as to its satisfaction of the Output Specifications.

7. REVISIONS

7.1 Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Service Submittal are identified by a sequential revision number. Correspondence related to such Service Submittal shall reference the reference number and revision number.

7.2 Re-submittals shall clearly show all revisions from the previous Service Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

7.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Service Submittal. Electronic versions of the Service

Submittal shall identify the persons who initialled the revisions to the printed version of the Service Submittal.

8. AUDIT BY THE CONTRACTING AUTHORITY REPRESENTATIVE

8.1 Without limiting any other right under this Project Agreement, the Contracting Authority Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.

8.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co that any Service Submittals were not correctly implemented, Project Co shall at its sole cost, immediately take all necessary steps to correct and modify the applicable Service Submittals and the Project Operations to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.

9. VARIATIONS

9.1 If, having received comments from the Contracting Authority Representative on any Service Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to Contracting Authority of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, Contracting Authority may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend its comment on the Service Submittal. Any failure by Project Co to notify Contracting Authority in accordance with this Section 9.1 that Project Co considers compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative's comments shall be without cost to Contracting Authority and without any extension of time.

APPENDIX A

[REDACTED]

APPENDIX B

MOCK-UP DESIGN AND CONSTRUCTION REQUIREMENTS

1.1 General

- 1.1.1 Design development includes virtual model and rendering mock-ups and the construction of one (1) physical not-in-situ mock-up that is to be full-size and complete, with varying degrees of functionality as identified herein.
- 1.1.2 The intent of the virtual model and rendering mock-up is to demonstrate virtually that the proposed design and associated systems are complete in all respects, are fully functional, coordinated, and meet all specified requirements, through digitally-animated three dimensional rendering with multiple viewpoints and movements through the space, to be revised through multiple interactive workshops with Contracting Authority where feedback can be provided for implementation in the design. This along with the finishes, furniture, equipment or other components would be developed through design development to satisfy any dimensional concerns and product and finish selections.
- The intent of the physical not-in-situ and in-situ mock ups is to demonstrate that the quality of finishes and workmanship meets the design requirements. The mock-ups are also intended to demonstrate the functionality, security, and ease-of-use for all of the elements that are required to be moveable, re-moveable or adjustable.
- 1.1.3 The development, design, construction, review, and modifications of mock-ups are an integral part of the design development process and are intended to inform and influence the design. Any and all revisions and modifications that Contracting Authority requires Project Co to implement to achieve mock-up approval are part of the design development process and do not constitute a Variation.
- 1.1.4 Upon Contracting Authority approval of a virtual model and rendering mock-up, the approved virtual model and rendering mock-up will serve as the standard for all items in the final construction that were represented by that approved virtual model and rendering mock-up.
- 1.1.5 Upon Contracting Authority approval of the physical not-in-situ mock up, the approved physical not-in-situ mock up will serve as the standard for all items in the final construction that were represented by the physical mock up. The physical not-in-situ

mock-up must remain intact and in place until completion of all mocked-up items in the final construction, unless otherwise directed to dismantle prior to their completion by Contracting Authority.

- 1.1.6 Upon Contracting Authority approval of the in-situ mock ups, the approved in-situ mock ups will serve as the standard for all items in the final construction that were represented by the in-situ mock ups. The in-situ mock ups must remain intact and in place as part of the final construction.
- 1.1.7 The physical not-in-situ mock-up must be secured during and after its construction from unauthorized access, vandalism, or the effect of weather, in a secure location within the Site, away from the Facility construction. Alternate mock-up locations are subject to Contracting Authority approval, which may be withheld.

1.2 Mock-ups

- 1.2.1 The following virtual model and rendering, physical and in-situ mock-ups are required:
 - .1 One (1) Inmate cell (type to be selected by Contracting Authority during design development) which will be virtually modelled and constructed onsite as a physical mock-up in a separate temporary shelter or facility within the Project’s perimeter;
 - .2 Partial dayroom virtually modelled and constructed as an in-situ mock-up (including seating, tables, TV area, correctional officer station, program room entrance);
 - .3 Correctional officer station (for a housing unit) virtually modelled and constructed as an in-situ mock-up;
 - .4 Central control room virtually modelled and constructed as an in-situ mock-up;
 - .5 Accessible non-contact visitation cubicle virtually modelled and constructed as an in-situ mock-up.
- 1.2.2 Provide a virtual mock-up of a complete medium security housing unit, consisting of a digitally-animated three-dimensional rendering with multiple viewpoints and movement through the space.
- 1.2.3 Mock-ups identified in this Appendix B are a part of the design development process and do not include the training mock-ups required for scenario training in the Physical Training Room, which must be constructed to meet the requirements of Schedule 15 – Output Specifications.

1.2.4 Inmate Cells

Thunder Bay Correctional Complex Project

- 1.2.4.1 A virtual model and rendering mock-up of four (4) cells is required: one for each risk placement category for men (minimum, medium, and maximum) and one that is indicative of a women’s medium housing unit cell. One of the four (4) virtual cells will be constructed as a physical not-in-situ mock-up, as per item 1.2.1.1 of this Appendix B.
- 1.2.4.2 The physical cell mock-up must be constructed and tested in accordance with the requirements of Schedule 15 – Output Specifications.
- 1.2.4.3 Cell virtual model and rendering, physical not-in-situ and in-situ mock-ups are intended to demonstrate full-functionality of each space, including all finishes, assemblies, and systems, and basis for evaluation will be as (but not limited to) the following:
- Architectural – materials; general appearance; accessibility; views; window operation; et cetera.
 - Detention Fixtures and Furnishings – items that would be typical for each cell type.
 - Security – in-situ testing of assemblies for resistance to physical attack (as per ASTM)
 - Security – access control (remote and local); ease of escape
 - Security – vandal resistance and durability of fixtures, finishes, and sealants
 - Security – door hardware type, installation, and functionality
 - Acoustics – sound transmission to and from adjacent spaces; reverberation; noise
 - Electrical – lighting fixtures; illumination levels; lighting control; simulation of power outage
 - Mechanical – plumbing fixture type and installation; grilles and diffusers; drains; et cetera.
- 1.2.5 **Partial Dayroom**
- 1.2.5.1 A partial dayroom virtual model and rendering and physical in-situ mock-up must be similar in general layout and construction as all dayroom layouts designed for each housing unit, and it must capture any and all significant atypical conditions that will be in the new dayrooms.
- 1.2.5.2 A partial dayroom virtual model and rendering and physical in-situ mock-up must incorporate:
- .1 the detention table and stools;

- .2 detention soft-seating for TV area;
- .3 a mounted TV with associated millwork and detention grade housing;
- .4 beverage station (with hot-water dispenser/spigot, sink, etc.); and
- .5 actual finishes that are planned for the finished dayroom.

1.2.5.3 The partial dayroom virtual model and rendering and physical in-situ mock-up must extend to include adjacent spaces that will be on the perimeter of the completed version of the dayroom being mocked up, up to a depth of 1.5m beyond the perimeter of the partial dayroom for the physical in-situ mock-up. The virtual model and rendering and physical in-situ mock-up must include (but is not limited to) flooring, ceiling, finishes, partitions, doors (with hardware), and lighting.

1.2.5.4 Demonstrate provisions for accessibility for mobility challenged Inmates in the partial dayroom virtual model and rendering and physical in-situ mock-up, particularly in the selection, assembly, and configuration of detention furnishings.

1.2.5.5 A partial dayroom virtual model and rendering and physical in-situ mock-up must include a mock-up of a typical housing unit correctional officer (“CO”) Station.

1.2.5.6 Provide a virtual model of the partial dayroom that is sufficiently sophisticated to provide a moving tour through the space, with certain static points of view created, in accordance with feedback from Contracting Authority during the design development phase.

1.2.6 **Housing Unit Correctional Officer (CO) Station**

1.2.6.1 Notwithstanding requirements for a dayroom virtual model and rendering and physical in-situ mock-up, except where a second CO station is modelled and constructed as part of a dayroom mock-up, the CO station virtual model and rendering and physical in-situ mock-up must incorporate all elements, fixtures, finishes, materials, and detailing that would appear in a final construction.

1.2.6.2 With the exception of a comprehensive and fully-integrated and programmed door access control system or intercom, the CO station physical in-situ mock-up must demonstrate full-functionality, configuration, ergonomics, finishes, materials, and detailing.

1.2.6.3 Any loose seating or desktop items that will be used at a typical CO station must be incorporated into the in-situ mock-up, except that loose seating need only approximate the proposed final seating selection.

1.2.7 Central Control Room

1.2.7.1 The physical in-situ mock-up of the central control room must include all millwork, loose furnishings, raised floor, flooring, finishes, wall-mounted devices, desktop monitors, keyboards, IT and electrical service devices, and functioning and fully-wired digital display screens capable of displaying split-screen images similar to a CCTV display. Plywood construction may be substituted for millwork and finished surfaces in the central control room physical in-situ mock-up for the purposes of achieving Contracting Authority approval of the physical in-situ mock-up.

1.2.7.2 The central control room mock-up enclosure is not required to meet the requirements of the security envelope specified for this room. However, the enclosure must accurately represent the height of the room, and location of glazed screens, secure pass-thru, speaker ports, openings to en-suite washroom, and connections to other adjacent spaces, such as a vestibule or security electronics room.

1.2.7.3 For the purposes of achieving Contracting Authority approval, the virtual model and rendering and physical in-situ mock-up loose seating must only approximate proposed final seating selection.

1.2.7.4 A mock-up of the graphic user interface (GUI), particularly with respect to door control, and all other electronic security systems must be incorporated into the central control room physical in-situ mock-up. Security control system development, troubleshooting, and training will also occur in this physical in-situ mock-up.

1.2.7.5 The central control room virtual model and rendering and physical in-situ mock-up is intended to demonstrate full-functionality of the space, with items of particular concern being:

- Ergonomics of the workstations, including seating and view angle
- Internal pedestrian flow and access to pass-thru
- Visibility of display screens and secure circulation hallway
- Accessibility
- Electronic Security Systems

1.2.8 Non-Contact Visitation Cubicle

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- 1.2.8.1 Provide a virtual model and rendering and physical in-situ mock-up of an accessible cubicle.
- 1.2.8.2 Install all handsets and other devices in the physical in-situ mock-up. Wire notification lights to a local power source. Communication devices need not be connected for sound, but must be installed.

APPENDIX C

[INTENTIONALLY DELETED]

SCHEDULE 11A

DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN

[REDACTED]

**SCHEDULE 11B
SERVICE QUALITY PLAN OUTLINE**

[REDACTED]

SCHEDULE 12

WORKS SCHEDULING REQUIREMENTS

1. DEFINITIONS

- 1.1 “**As-built Works Schedule**” means the final Progress Works Schedule with a Schedule Status Date equal to the actual Final Completion Date.
- 1.2 “**Contracting Authority Review Period**” means the time period required by Contracting Authority to review a Works Submittal measured in Business Days starting on the first Business Day after receipt of a Works Submittal from Project Co up to and including the day on which Contracting Authority returns the Works Submittal to Project Co with an assigned comment pursuant to Schedule 10 – Review Procedure.
- 1.3 “**Close-out Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.4 “**Commissioning Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.5 “**Current Look-ahead Schedule**” means the most up-to-date Look-ahead Schedule submitted by Project Co pursuant to Section 20.2(b)(iii) of the Project Agreement representing the current Project Co strategy for completing the Works in greater detail than is shown in the Current Progress Works Schedule. For clarity, a Look-ahead Schedule with a Schedule Status Date or a Schedule Revision Date earlier than 15 Business Days following the end of the previous calendar month shall not be deemed the Current Look-ahead Schedule.
- 1.6 “**Current Progress Works Schedule**” means the most up-to-date Progress Works Schedule submitted by Project Co pursuant to Section 20.2(b)(ii) of the Project Agreement representing the current Project Co strategy for completing the Works and the actual progress of the Works. For clarity, a Progress Works Report with a Schedule Status Date earlier than 15 Business Days following the end of the previous calendar month shall not be deemed the Current Progress Works Schedule.
- 1.7 “**Design Development Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.8 “**Draft Works Schedule**” means a draft version of the Works Schedule based on the Proposed Works Schedule to be delivered by Project Co pursuant to Section 20.2(b)(i) of the Project Agreement. “**Draft Works Schedules**” means collectively all Draft Work Schedules.
- 1.9 “**Interim Works Schedule**” means the schedule developed and being consistent with a Primavera Level 3 Schedule to complete the Works established between Contracting Authority and Project Co prior to or on the date of the Project Agreement attached hereto as Schedule 12 - Appendix A, Part 2, which shows a detailed critical path for (i) any Works undertaken by the preferred proponent prior to or on the date of the Project Agreement,

Thunder Bay Correctional Complex Project

- and (ii) any Works undertaken by Project Co for approximately 4 months following Financial Close.
- 1.10 “**Key Works Milestone**” has the meaning given in this Schedule 12 Appendix B.
- 1.11 “**Level 3**” means the level of detail required for a Project Control Schedule as set out in the AACE International Recommended Practice 37R-06 entitled, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”
- 1.12 “**Level 4**” means the level of detail required for a Project Control Schedule as set out in the AACE International Recommended Practice 37R-06 entitled, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”
- 1.13 “**Level 5**” means the level of detail required for a Project Control Schedule as set out in the AACE International Recommended Practice 37R-06 entitled, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”
- 1.14 “**Look-ahead Schedule**” shall be developed in accordance with Section 11 of this Schedule 12 and means:
- (a) those elements of the Progress Works Schedule developed and being consistent with a Primavera Level 4 Schedule to support the planning of Contracting Authority activities, including but not limited to all Works Activities and any other applicable milestones and activities in progress, starting, or ending during the 12 week period starting 15 Business Days following the end of a previous calendar month; and
 - (b) the Interim Works Schedule.
- 1.15 “**Major Works Element**” has the meaning given in this Schedule 12 Appendix D.
- 1.16 “**Micro-Schedule Works Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.17 “**Micro-Schedule Works Milestone**” has the meaning given in this Schedule 12 Appendix B.
- 1.18 “**Near Critical Path Activities**” has the meaning given in this Schedule 12 Section 9.3(d)(ii).
- 1.19 “**Permitting, Licensing, Approval and Agreement Activity**” has the meaning given in Appendix B to this Schedule 12.
- 1.20 “**Primary Works Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.21 “**Primary Works Milestone**” has the meaning given in this Schedule 12 Appendix B.

- 1.22 “**Procurement Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.23 “**Progress Works Schedule**” shall be developed in accordance with Section 10 of this Schedule 12 and means the working schedule indicating for a specific reporting period the actual progress, actual Works Milestone dates, actual Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete Works Activities and Works Milestones, and any mitigation or recovery plan, shown in comparison to the baseline as defined by the Works Schedule or Revised Works Schedule, as applicable or in comparison to the Recovery Schedule, as may be applicable, developed to a level of detail to document Project Co’s actual performance to complete the Works, and facilitate the analysis of any variance from the Works Schedule and forecasting of future performance to complete the Works and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 37.2(a), (b) and (d) of the Project Agreement, actual claims for Delay made pursuant to Section 37.2(f) of the Project Agreement or any Variation Confirmation or Variation Directive, and shall be;
- (a) Traceable to and progressed from the Works Schedule, or the Revised Works Schedule, as applicable;
 - (b) Traceable to and progressed from the Progress Works Schedule of the immediately previous month; and
 - (c) prepared, maintained, updated, and submitted by Project Co, on a monthly basis, in accordance with this Schedule 12.
- 1.24 “**Project Schedules**” means, as applicable, any or all of the Current Progress Works Schedule, Current Look-ahead Schedule, Interim Works Schedule, Works Schedule, Revised Works Schedule Look-ahead Schedule, Progress Works Schedule, Recovery Schedule, and Works Area Micro-Schedule.
- 1.25 “**Project Scheduler**” means the Project Co manager responsible to develop and maintain the Project Schedules and related reports.
- 1.26 “**Proposed Works Schedule**” means the schedule to complete the Works established between Contracting Authority and Project Co prior to or on the date of the Project Agreement attached hereto as Schedule 12 – Appendix A, Part 1, which includes details in support of monitoring the progress of the Works, determining the likely future progress of the Works, and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 37.2(a), (b) and (d) of the Project Agreement, and actual claims for delay made pursuant to Section 37.2(f) of the Project Agreement or Variation until such time as the Draft Works Schedule becomes the Works Schedule pursuant to Section 20.2(d) of the Project Agreement.
- 1.27 “**Recovery Schedule**” means a Progress Works Schedule generated pursuant to Section 20.4(a)(iv)(A) of the Project Agreement to illustrate Project Co’s revised strategy for completing the Works Activities and maintaining the upcoming milestone dates. For

clarity, the Recovery Schedule does not replace the Works Schedule and is therefore not a new baseline schedule but the Recovery Schedule will be used as a comparator for subsequent Progress Works Schedules to illustrate progress against Project Co's revised strategy in accordance with Section 10 of this Schedule 12.

- 1.28 **“Recovery Schedule Report”** has the meaning given in Section 20.4(a)(iv)(C) of the Project Agreement.
- 1.29 **“Review Procedure Activities Register”** means a submittals register that Project Co develops, monitors, and regularly updates, where such register tracks all Works Submittals and including but not limited to those submittals related to Equipment, (including all re-submittals) that Project Co is required to provide in accordance with Schedule 10 – Review Procedure from and after Financial Close through to Final Completion.
- 1.30 **“Review Procedure Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.31 **“Revised Works Schedule”** has the meaning given in section 8.1 of this Schedule 12.
- 1.32 **“Schedule Revision Date”** means the last date on which changes were made to the specific Project Schedules including, but not limited to, the content, calendars or working time, work breakdown structure, groupings, sequencing logic, activity or milestone relationships, activity or milestone descriptions, any work breakdown structure code, the addition or deletion of any activity or milestone, or any settings, but excluding updates to indicate the actual progress of each activity, actual Works Milestone dates, actual Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete Works Activities and Works Milestones.
- 1.33 **“Schedule Status Date”** means the date up to which (inclusive) the progress of the Works were measured, and on which the update to the specific Project Schedule is based, indicating the progress of each activity, actual as-built Works Milestone dates, and actual as-built Works Activity, durations, start and end dates.
- 1.34 **“Secondary Works Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.35 **“Secondary Works Milestone”** has the meaning given in this Schedule 12 Appendix B.
- 1.36 **“Traceable”** means prepared in such a way that Contracting Authority has the ability to maintain, track and trace all activities and milestones including activity ID's, descriptions, activity codes, logical sequences, interdependencies and data consistency between and/or within all Project Schedules.
- 1.37 **“Transition Activities”** has the meaning given in this Schedule 12 Appendix B.
- 1.38 **“Utility Related Activity”** has the meaning given in this Schedule 12 Appendix B.

- 1.39 **“Working Day”** means a day on which Project Co can reasonably schedule a specific Works Activity considering the requirements of the Project Agreement and any other constraints.
- 1.40 **“Works Activity”** means any of the Design Development Activities, Permitting, Licensing Approval and Agreement Activities, Procurement Activities, Equipment Procurement and Installation Activities, Transition Activities, Close-Out Activities, Primary Works Activities, Secondary Works Activities, Micro-Schedule Works Activities, as defined in Appendix B to this Schedule 12 or any other activity to complete the Works as defined in this Project Agreement.
- 1.41 **“Works Area Micro-Schedule”** shall be developed at the request of Contracting Authority in accordance with Section 20.2 of the Project Agreement, and Section 12 of this Schedule 12 and means any portion of the Progress Works Schedule for a specific portion of the Works that has been developed and is consistent with a Primavera Level 5 Schedule to support effective day-by-day or hour-by-hour coordination of the Works described in Section 20.2(e) of the Project Agreement; and each Works Area Micro-Schedule shall further contain the dates for events and activities (including Works Milestones) that are consistent with those set out in the Progress Works Schedule.
- 1.42 **“Works Milestone”** means any of the Key Works Milestones, Primary Works Milestones, Secondary Works Milestones, or Micro-Schedule Works Milestones as defined in Appendix B to this Schedule 12 or any other milestone included in the Project Schedules.
- 1.43 **“Works Schedule”** means Project Co’s baseline schedule which shall comply with Section 20.2 of the Project Agreement and Section 7 of this Schedule 12.
- 1.44 **“Works Schedule Assumptions Report”** shall be developed in accordance with Section 9 of this Schedule 12 and means a narrated report including all applicable data that document the assumptions made by Project Co to generate any of the Project Schedules.
- 1.45 **“Works Submittals”** has the meaning given in Schedule 10 – Review Procedure.

2. GENERAL REQUIREMENTS

- 2.1 Project Co shall schedule the Works to conform to all the requirements of the Project Agreement. Project Schedules shall contain sufficient detail to enable Contracting Authority to,
- (a) monitor the planned schedule for the Works and the progress to complete the Works, and determine whether Project Co is likely to achieve Substantial Completion by the Scheduled Substantial Completion Date, and Final Completion by the Scheduled Final Completion Date; and
 - (b) manage Contracting Authority interfaces and analyze the schedule impacts of any potential delay, Delay Event or Variation;

Thunder Bay Correctional Complex Project

- 2.2 Project Co shall prepare the Project Schedules in accordance with Good Industry Practice for a large complex project and in accordance with the Project Agreement.
- 2.3 Project Co shall base all the Project Schedules on the logical sequencing and reasonable durations anticipated to complete the Works
- 2.4 Project Co shall prepare detailed computerized Project Schedules using the critical path method network and a Works Schedule dependent cash flow forecast, each in a form approved by Contracting Authority.
- 2.5 Project Co shall divide the applicable Works into activities and milestones with appropriate phases, sequencing, interdependencies and logic to show Project Co's overall approach to the planning and execution of the Works including, but not limited to, all Works Activities, all Works Milestones, and any other activities related to mobilization and setup, manufacturing and construction, including self-performed works, construction staging and sequencing, temporary works, subcontractor work, quality control and quality assurance activities, integration and commissioning activities, Variations and cash allowance works, and any other activities required both on and off the Site to complete the Works up to Final Completion.
- 2.6 Project Co shall:
 - (a) continuously monitor and compare the progress of the Works against the Works Schedule, the Revised Works Schedule a Recovery Schedule, the Current Progress Works Schedule, and Current Look-ahead Schedule;
 - (b) update the Project Schedules in accordance with the Project Agreement;
 - (c) update the cash flow projections set out in the Works Report;
 - (d) maintain the continuity of the Project Schedules critical path network for all updates and revisions;
 - (e) immediately notify Contracting Authority of any variance or potential variance in any Works Activities or Works Milestones if the affected Works Activities or Works Milestones have any known or readily apparent impact on Contracting Authority, including integration and coordination issues with Contracting Authority or commissioning issues involving Contracting Authority or that is undertaken by Contracting Authority or by a Contracting Authority Party; and
 - (f) ensure that in the case of Progress Works Schedules, are progressed from and are Traceable to the Works Schedule, as applicable, and that each successive monthly Progress Works Schedule is updated from and Traceable to the immediately previous Progress Works Schedule; and

- (g) notify Contracting Authority of any variance or potential variance in any Works Activities or Works Milestones in accordance with Project Co's obligations set out in Section 37.2 of the Project Agreement.

3. PROJECT SCHEDULE MEETINGS AND WORKSHOPS

3.1 Initial Meetings to Discuss Draft Works Schedule

- (a) Prior to the submission of the Draft Works Schedule by Project Co pursuant to Section 20.2(b)(i) of the Project Agreement, Project Co shall schedule and attend a minimum of two planning meetings with Contracting Authority to discuss the scope, phasing and sequencing of the Project, the Works Activities and the Works Milestones and to resolve questions or issues relating to Project Co's preparation of the Draft Works Schedule.
- (b) The planning meetings shall take place at the date and time mutually agreed upon by Contracting Authority and Project Co provided that the first meeting shall be completed no later than 10 Business Days following Financial Close and the second meeting shall be completed no later than 30 Business Days following Financial Close.

3.2 Ongoing Meetings to Discuss Project Schedules

- (a) Unless otherwise agreed to by Contracting Authority and Project Co, at least twice and no more than five times per calendar year, upon Contracting Authority's written request, Project Co shall meet with Contracting Authority to explain Project Co's strategy, activities, critical path and areas of concern or particular challenges associated with the performance of the Works or any part thereof in relation to the Progress Works Schedule or any other Project Schedule for the upcoming six month period. The meetings shall take place at the date and time mutually agreed upon by Contracting Authority and Project Co.
- (b) To additionally prepare for a Works Committee meeting, the Project Co Representative, the Project Scheduler and the Contracting Authority Representative shall meet in the week preceding a Works Committee meeting to discuss the Current Progress Works Schedule, the Current Look-ahead Schedule and any other Project Schedule related matters.

3.3 Works Schedule Meeting Procedures and Practices

- (a) The meetings described in Sections 3.1(a) and 3.2(a) of this Schedule 12 shall have the following procedures and practices:
 - (i) Project Co shall chair the meeting.

Thunder Bay Correctional Complex Project

- (ii) Project Co shall prepare the agenda, subject to Contracting Authority comments.
- (iii) The agenda and accompanying materials shall be circulated to the attendees at least 5 Business Days in advance of the meeting date.
- (iv) Minutes of the meetings, recommendations and requests for matters to be escalated to the Works Committee shall be recorded and maintained by Project Co.
- (v) Project Co shall distribute the minutes of the meeting within 5 Business Days of the meeting. Unless Contracting Authority notifies Project Co within 5 Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to be in agreement with the minutes.

4. AUDIT AND SUBMISSION REQUIREMENTS

4.1 Audit Requirements:

- (a) On a quarterly basis, Project Co shall provide to Contracting Authority an audit of the Current Progress Works Schedule and the Current Look-ahead Schedule, to confirm conformance to the requirements of Appendix E to this Schedule 12, and to confirm the accuracy of the progress and as-built information. Project Co shall submit the audit report to Contracting Authority no later than 10 Business Days after the last day of the quarter. The audit report shall be reviewed and signed by the Project Scheduler and the Project Co Representative.

4.2 General Submission Requirements

- (a) Project Co shall submit the Project Schedules to Contracting Authority pursuant to Section 20.2 of the Project Agreement.
- (b) Project Co shall review and approve the Project Schedules and shall indicate same by including the Project Co Representative's dated signature on the front cover of each document.
- (c) Project Co shall submit the Draft Works Schedule, the Revised Works Schedule Recovery Schedule(s), As-built Works Schedule, the draft of a Works Area Micro-Schedule, and any revision to any of these submittals in accordance with Schedule 10 – Review Procedure.
- (d) Project Co shall submit all Project Schedules and related reports to Contracting Authority in accordance with the Project Agreement and this Schedule 12 and Contracting Authority may comment on these other Project Schedules in its sole discretion. For clarity, these documents shall not be Works Submittals.

- (e) All Project Schedules submitted to Contracting Authority shall be submitted in the following file formats:
 - (i) the native file format of the software used to generate and manage the Project Schedules. The native format shall be the exported .XER file and .XML file for Primavera, fully compliant with all requirements of this Project Agreement. The native file shall be fully calculated and in a stable state; and
 - (ii) two word searchable high resolution colour PDF version of each Project Schedule with one showing all content, and the other only showing the critical path activities and the activities with a float of less than 20 Working Days. Each Project Schedule layout shall be arranged by WBS and shall include activity ID, activity name, original duration, remaining duration, percent complete, start, finish, baseline start, baseline finish, total float, baseline total float. Each month, Project Co shall submit the .XER file used to generate all Project Schedules together with PDF soft version of the Project Schedules.
- (f) Project Co shall base the next month's .XER file on the preceding month's .XER file.
- (g) The filename of each of the electronic files submitted shall indicate the project name acronym, schedule type, revision number and the Schedule Status Date in the format 'YYYYMMDD'. e.g. the 5th version of the Progress Works Schedule for the ABC project indicating the progress of the works up to 31 October 2023 shall be named "ABC Updated Works Schedule Rev 05 – 20231031".
- (h) Project Co shall create and maintain a register detailing the submission of each of the Project Schedule document sets. The register shall include the Project Schedule document title, submission date, Schedule Revision Date, Schedule Status Date, and version number. The updated register shall be included in any Project Schedule submission.
- (i) Upon Contracting Authority's request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable Contracting Authority to replicate the Project Schedules submitted by Project Co using the native file formats provided by Project Co.

5. PROJECT SCHEDULE REQUIREMENTS FOR SCHEDULE 10 WORKS SUBMITTALS

- 5.1 Project Co shall schedule the Review Procedure Activities, including the submission dates for all Works Submittals and the Contracting Authority Review Period in accordance with Section 2 of Schedule 10 – Review Procedure.

6. PROJECT SCHEDULES TECHNICAL REQUIREMENTS

- 6.1 Project Co shall comply with the Works Schedule technical requirements set out in this Schedule 12 Appendix E.

7. WORKS SCHEDULE

- 7.1 The Works Schedule is a baseline representation of Project Co’s initial strategy to complete the Works.

- 7.2 The Works Schedule shall be an unaltered copy of the Proposed Works Schedule for all information up to the date on which the Draft Works Schedule is submitted to Contracting Authority pursuant to Section 20.2 of the Project Agreement. For clarity, all Works Activities and Works Milestones scheduled to start before the date on which the Draft Works Schedule is submitted to Contracting Authority shall remain unchanged, Project Co may refine the remaining activity sequencing and durations only if these strategic or assumption changes are documented and explained in the Works Report and the forecast Substantial Completion Date shall be equal to the Scheduled Substantial Completion Date and all other Key Milestone dates shall remain unchanged;

- 7.3 Project Co shall not schedule as part of the Draft Works Schedule any new Works Activities that were not included in the Proposed Works Schedule on the date of this Project Agreement, which require any material input, review or participation or decision from Contracting Authority or any Contracting Authority Party without providing Contracting Authority at least 10 Business Days prior written notice and without obtaining the prior agreement of the Contracting Authority Representative.

- 7.4 The Works Schedule shall:

- (a) have a Schedule Status Date equal to the Financial Close date, unless the Works Schedule is revised as a result of a Variation issued pursuant to Schedule 22 – Variation Procedure in which case the Schedule Status Date for the Revised Works Schedule shall be the date of the Variation Confirmation;
- (b) not have any progress data for any activity or milestone after the Schedule Status Date for the specific Works Schedule; and
- (c) not include any delays whatsoever unless otherwise agreed to by Contracting Authority in writing. Any delay and resulting mitigation measures shall only be

shown in the Progress Works Schedule, Look-ahead Schedule and Works Area Micro-Schedule.

- 7.5 The Draft Works Schedule and the Works Schedule shall include at a minimum:
- (a) The title “Draft Works Schedule” until it becomes the Works Schedule pursuant to Section 20.2(d) of the Project Agreement and “Works Schedule” thereafter.
 - (b) All elements included in the Proposed Works Schedule.
 - (c) The data from the Proposed Works Schedule shall be saved as the baseline for the Draft Works Schedule and shall be shown together with the revised dates and durations to graphically indicate the variances between the Proposed Works Schedule and the Draft Works Schedule. When the Draft Works Schedule becomes the Works Schedule pursuant to Section 20.2(d) of the Project Agreement, the data from the Draft Works Schedule shall become the new baseline data for the Project Schedules. For clarity, each activity in the Draft Works Schedule shall have two horizontal bars indicating the Proposed Works Schedule baseline, and the revised Draft Works Schedule proposed baseline.
 - (d) Key Works Milestones grouped together at the top of the Works Schedule in a section with the heading “Key Works Milestones”.
 - (e) In a separate section titled “Review Procedure” a summary activity representing the related Design Development Activities. Project Co may create a single summary activity representing the Design Development Activities or the Review Procedure Activities of multiple Major Works Elements if the design for these Major Works Elements will be consolidated into a single submission.
 - (f) The following Works Activities and Works Milestones structured in such a way to clearly indicate Project Co’s overall approach, phasing and sequencing of the planning and execution of the Works:
 - (i) Key Works Milestones;
 - (ii) Primary Works Milestones;
 - (iii) Primary Works Activities; and
 - (iv) any other activities required by Project Co to fulfill the requirements of this Project Agreement.
 - (g) No Project Schedule shall be finalized or considered an acceptable Project Schedule to Contracting Authority until it has received a No Comment or Minor Non-Conformance Designation. For clarity, Project Co is still required to correct all non-conformances in any Project Schedule and detail to Contracting Authority how each

non-conformance has been addressed before the Works Schedule is used for any purpose under this Project Agreement

8. REVISED WORKS SCHEDULE

- 8.1 If Contracting Authority is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, Delay Event, a Variation Confirmation, or a Variation Directive, the scope and/or schedule of the Works has changed significantly since the finalization of the Works Schedule, Contracting Authority may require Project Co to replace the Works Schedule with a revised and updated Works Schedule (a “**Revised Works Schedule**”). If Contracting Authority gives Notice to Project Co that it requires a Revised Works Schedule, Project Co shall prepare and submit a Revised Works Schedule (as a Works Submittal), no later than 15 Business Days after Project Co receives such Notice, for review pursuant to Schedule 10 – Review Procedure
- 8.2 If Project Co is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, a Variation Confirmation, or a Variation Directive, the scope of the Works has changed significantly since the finalization of the Works Schedule, Project Co may prepare a Revised Works Schedule for review in accordance with Schedule 10 – Review Procedure. As part of its review of Project Co’s Revised Works Schedule, Contracting Authority may, acting reasonably, determine whether a Revised Works Schedule is necessary or appropriate.
- 8.3 Revised Works Schedule submitted by Project Co,
- (a) shall have all requirements as those listed for the Works Schedule.
 - (b) shall have activities which are Traceable to those that appeared in the Works Schedule; and
 - (c) shall identify all differences between the Works Schedule and the Revised Works Schedule.
- 8.4 If the Revised Works Schedule is finalized pursuant to Section 7.5(g), the Revised Works Schedule shall replace the Works Schedule

9. WORKS SCHEDULE ASSUMPTIONS REPORT

- 9.1 The Works Schedule Assumptions Report shall be submitted with the Proposed Works Schedule, Draft Works Schedule, and any subsequent revision of the Works Schedule.
- 9.2 Every Works Schedule Assumptions Report shall include a black-lined version of the previous Works Schedule Assumptions Report to clearly indicate the changes made from the previous version, and a clean version.

- 9.3 The Works Schedule Assumptions Report shall at least include the following report sections and related content:
- (a) Cover page including the title "Works Schedule Assumptions Report ", the Project title, date of the report, issuance date, version date, and the version number of the relevant Works Schedule, an applicable Recovery Schedule or Progress Works Schedule, and the Project Co Representative signature approving the Report;
 - (b) "Section 1 - Project Description, Schedule Integration Process", including a written narrative of a high-level description of the Project. Describe the Works' phases, and the inclusion of schedule input from subcontractors, vendors, third parties (such as government agencies and utility companies), and Contracting Authority. Provide a written narrative of the Works' scope, in addition to the basis for defining the work breakdown structure (WBS). This section may also cover total quantities for key project commodities, so the Works' progress can be better tracked;
 - (c) "Section 2 - Implementation strategy", including a written narrative of no less than 750 words describing the overall approach, proposed sequencing and work plan in accordance with the Site Requirements and to complete the Works required to achieve Substantial Completion. This section shall include diagrams to clarify intent and shall be written to identify the strategy or approach to:
 - (i) complete any additional site investigations and other due diligence;
 - (ii) complete the design developments and review process;
 - (iii) obtain any required major Permits, Licenses Approvals and Agreements, including the Listed Project Co PLAAs;
 - (iv) procurement strategy for suppliers and critical components of the Work; and
 - (v) testing and commissioning of the Works and Final Completion and close-out, including asset handover and development of final As-Built drawings and manuals.
 - (d) "Section 3 - Critical path Analysis", including the following:
 - (i) critical path risk, including a narrative in tabular form describing the risks to completing the critical path activities to achieve Substantial Completion, affected area, and Project Co's strategy to mitigate or avoid these risks;
 - (ii) overall project critical path and Near Critical Path Activities that includes a Gantt Chart schedule that shows the critical path of the Project as well as Near Critical Path activities. Near Critical Path activities shall be activities having less than 20 Working Days total float ("**Near Critical Path Activities**"); and

Thunder Bay Correctional Complex Project

- (iii) longest Path - provide programme layouts for the first three longest paths;
- (e) "Section 4 - Works Schedule Structure and Logic", including:
 - (i) a narrative to explain how the Work Breakdown Structure (WBS) is organized and how activities are assigned to WBS level; and
 - (ii) narrative and table to explain the activity ID and naming convention;
- (f) "Section 5 - Planned working calendar", including a table defining each of the schedule calendars. For each calendar include the work days (days of the week), normal working hours, number and hours of any shifts, and a list of all assumed non-Working Days for any part of the Works (i.e. holidays, environmental restricted work windows, etc.);
- (g) "Section 6 - Means and Methods", including an executive summary of the intended means and methods for all construction, erection or installation related Works Activities of primary components for each of the Major Works Elements as defined in Appendix D of Schedule 12 and include for each a short narrative on the type of work, any constructability issues and if the work will be self-performed by the Construction Contractor or sub-contracted;
- (h) "Section 7 - Procurement", including a table defining list of procurement of major items and the lead time detailing fabrication and delivery to site;
- (i) "Section 8 - Pandemic and Epidemic response", including a written narrative of no less than 1000 words:
 - (i) describing Project Co's plans and processes for addressing and implementing the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (ii) describing the detailed steps Project Co intends to take to prepare for and respond to the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (iii) demonstrating the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements on the Works Schedule generally, and specifically with reference to the following areas:
 - A. planned working calendar (Section 5 of Assumption Report);
 - B. resource (workforce) plan;
 - C. production rates; and
 - D. constraints and restrictions (Section 10 of Assumption Report);

- (iv) outlining Project Co's strategy to mitigate the effects described in Section 9.3(i)(iii); and
- (v) how the processes described in Sections 9.3(i)(i) and 9.3(i)(ii) will affect the Works Schedule.
- (j) "Section 9 - General Assumptions", including any other assumptions used by Project Co to generate the schedule including but not limited to any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, etc.; and
- (k) "Section 10 - Constraints and Restrictions", including a table of any imposed date constraints used. For each constraint, include activity ID, constraint description, constraint type, hard coded date used, reason for the constraint, and date and reference to approval by the Contracting Authority to allow the constraint.

10. PROGRESS WORKS SCHEDULES

10.1 Progress Works Schedule Validity

- (a) If, in the opinion of Contracting Authority, any Progress Works Schedule does not meet the requirements of the Project Agreement, or the actual progress of the Works on or off the Site, an actual start date, or an actual finish date does not correspond to the information indicated in the Progress Works Schedule for the applicable time period, then the Progress Works Schedule shall be deemed null and void, shall not be relied upon, and Project Co shall submit a revised version of the Progress Works Schedule for review to Contracting Authority within 5 Business Days of receiving Contracting Authority's written notice of same, which written notice shall include full details of the defects in the Progress Works Schedule rendering it null and void.

10.2 Progress Works Schedule Content

- (a) The Progress Works Schedule shall include, at minimum, the following elements:
 - (i) the title "Progress Works Schedule" in the title block;
 - (ii) all elements required to be included in the Works Schedule;
 - (iii) have a data date which is the last day of the month to which the Progress Works Schedule applies unless otherwise agreed to between Contracting Authority and Project Co;
 - (iv) the current progress of the Works;
 - (v) the Works Schedule (or Revised Works Schedule or current Recovery Schedule, as applicable) baseline shown in the schedule using the

scheduling software’s baseline functionality to visually indicate the variance between the Works Schedule (or Revised Works Schedule or current Recovery Schedule, as applicable) and the actual dates for all past or ongoing activities and milestones and the new forecast dates for all future activities and milestones as indicated in the Progress Works Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format agreed to with Contracting Authority; and

- (vi) the implementation of each Variation Confirmation through which the addition of scope of Works is confirmed. For clarity, all Variations resulting in additional scope of Works shall be listed in the Progress Works Schedule as separate activities grouped together under the heading “Variations”, the activity name shall start with “VC-” followed by the Variation Confirmation number and a short description;
- (b) the recovery plan to mitigate any delays; and
- (c) potential Delay Events pursuant to Section 37.2(a) of the Project Agreement for which the notice required pursuant to Section 37.2(b) and 37.2(d) of the Project Agreement was provided to Contracting Authority. Project Co shall show the duration of the event, the impact to any of the related Works Activities and the mitigation measures to be implemented by Project Co.

11. LOOK-AHEAD SCHEDULE REQUIREMENTS

11.1 Look-ahead Schedule validity

- (a) Project Co shall ensure that Works Milestone dates and the Works Activity dates and durations indicated on the Current Look-ahead Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the Current Progress Works Schedule for any specific period. If any of these Work Milestone or Works Activity dates do not correspond with the Current Progress Works Schedule, or the Current Progress Works Schedule does not comply with the requirements of the Project Agreement, the Current Look-ahead Schedule shall be deemed null and void and shall not be relied upon, and Project Co shall either:
 - (i) revise the Current Look-ahead Schedule and submit the revised version to Contracting Authority; or
 - (ii) generate a new version of the Progress Works Schedule indicating the correct Works Milestone and Works Activity dates and durations,

within 5 Business Days of becoming aware of the discrepancy.

Thunder Bay Correctional Complex Project

- (b) The Current Look-ahead Schedule shall also be deemed null and void, and shall not be relied upon to define the Contracting Authority Review Period to process Works Submittals pursuant to Schedule 10 – Review Procedure, if:
 - (i) the actual sequencing logic and submission dates for the Review Procedure Activities and the scheduled Review Procedure Activities included in the Current Look-ahead Schedule does not conform to the requirements of Section 5 of this Schedule 12; or
 - (ii) if the Current Look-ahead Schedule is deemed null and void pursuant to Section 11.1(a) of this Schedule 12,

in which case the Contracting Authority Representative shall provide Project Co with an estimate of the time necessary for processing such Works Submittals pursuant to Section 2.7 of Schedule 10 – Review Procedure.

11.2 Look-ahead Schedule content

- (a) The Look-ahead Schedule shall at least include:
 - (i) the title “Look-ahead Schedule” and the date range for which the Look-ahead Schedule is applicable in the title block;
 - (ii) time filter of the Progress Works Schedule from the scheduling software for all elements required to be within the 12 week period, starting from the reporting date;
 - (iii) in the section titled “Review Procedure”, expand each summary activity created for the Works Schedule to include a separate activity for each Review Procedure Activity for each Works Submittal, and for each clearly indicating the specific Works Submittal number; and
 - (iv) activities related to each Variation confirmed by a Variation Confirmation issued to a greater level of detail than indicated in the Progress Works Schedule.

12. WORKS AREA MICRO-SCHEDULE REQUIREMENTS

12.1 Works Area Micro-Schedule validity

- (a) Project Co shall ensure that Works Milestone dates and the Works Activity dates and durations indicated on the Works Area Micro-Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the Current Progress Works Schedule for any specific period. If any of these Works Milestone or Works Activity dates do not correspond with the Current Progress Works

Schedule the Works Area Micro-Schedule shall be deemed null and void and shall not be relied upon, and Project Co shall either:

- (i) revise the Works Area Micro-Schedule and submit the revised version to Contracting Authority; or
- (ii) generate a new version of the Progress Works Schedule indicating the correct Works Milestone and Works Activity dates and durations,

within 5 Business Days after becoming aware of the discrepancy.

12.2 Upon Contracting Authority's request, Project Co shall provide a drawing of the affected Works areas, which is marked up to illustrate the sequence and timing of the construction activities depicted within any Works Area Micro-Schedule.

12.3 The Works Area Micro-Schedule shall include, at a minimum, the following elements which shall be limited to the specific area or element of the Works related to that Works Area Micro-Schedule:

- (a) the title "Works Area Micro-Schedule", a descriptor of the area of Works for which the schedule is applicable, and the date range for which the Look-ahead Schedule is applicable in the title block;
- (b) the information of the originally agreed Works Area Micro-Schedule for the specific area or element of Works shown in the schedule using the scheduling software's baseline functionality to visually indicate the variance between the agreed Works Area Micro-Schedule and the actual dates for all past or ongoing activities and milestones and the new forecast dates for all future activities and milestones indicated in any update of the Works Area Micro-Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format agreed to with Contracting Authority, the first version of the schedule shall therefore have two bars per activity indicating the same timeframe, and each of the actual and forecast dates shall correspond with Current Progress Works Schedule;
- (c) Micro-Schedule Works Milestones; and
- (d) Micro-Schedule Works Activities.

APPENDIX A

PROPOSED WORKS SCHEDULE AND INTERIM WORKS SCHEDULE

[REDACTED]

APPENDIX B

DEFINITIONS FOR WORKS SCHEDULE MILESTONES AND ACTIVITIES

1.1 “Close-out Activity” means any of the following activities or milestone events:

- (a) any activity to develop, prepare and finalize the Final Commissioning Program in accordance with and pursuant to Section 24 of the Project Agreement and Schedule 10 – Review Procedure;
- (b) inspection by Contracting Authority Parties and the Independent Certifier;
- (c) identifying and resolving Minor Deficiencies;
- (d) identifying and completing Seasonal Works;
- (e) finalizing and issuing of as-built documents;
- (f) any other pre-Substantial Completion activity required to achieve Substantial Completion;
- (g) any other post-Substantial Completion activity required to achieve Final Completion; and
- (h) any additional activities or milestones related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “Close-out Activities” means collectively all of the Close-out Activities.

1.2 “Commissioning Activity” means any of the following activities or milestone events:

- (a) any activity to develop, prepare and finalize the Final Commissioning Program, in accordance with Section 24 of the Project Agreement and Schedule 10 – Review Procedure;
- (b) any activity to obtain an approval or acceptance pursuant to the Project Agreement to complete the commissioning process;
- (c) joint Contracting Authority and Project Co inspections, testing and walk through activities;
- (d) commissioning coordination meetings, workshops and draft document page turns;
- (e) all notices to be issued pursuant to Section 24 of the Project Agreement;

Thunder Bay Correctional Complex Project

- (f) activities and requirements pursuant to Schedule 14 – Outline Commissioning Program of the Project Agreement;
- (g) Contracting Authority review period pursuant to Schedule 10 – Review Procedure;
- (h) Independent Certifier review period pursuant to Sections 24.3(b) of the Project Agreement; and
- (i) any additional activities or milestones related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Commissioning Activities**” means collectively all of the Commissioning Activities.

1.3 “Design Development Activity” means any of the following activities or milestones events:

- (a) activities outlined in the Design Quality Plan;
- (b) due diligence, including review of existing information, field survey, investigation and testing;
- (c) presentations/workshops, including but not limited to the Design Workshops, pursuant to section 18.5 of the Project Agreement, on design topics expected to involve multiple Contracting Authority stakeholders, or any other activities required to satisfy and demonstrate design conformance;
- (d) production of Design Development Submittals;
- (e) production of Construction Document Submittals;
- (f) production of Works Submittals and Services Submittals, to be submitted prior to Substantial Completion, pursuant to Schedule 10 – Review Procedure;
- (g) other design development activities outlined in Section 18 of the Project Agreement; and
- (h) any additional activities related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Design Development Activities**” means collectively all of the Design Development Activities.

1.4 “Equipment Procurement and Installation Activities” means the activities to be undertaken by Project Co as set forth in Section 21 of the Project Agreement, including, the procurement, decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning, and training, in respect of Equipment and Existing Equipment,

Thunder Bay Correctional Complex Project

and the coordination and scheduling of the installation and commissioning of SolGen Equipment.

1.5 “Key Works Milestone” means any of the following milestone events and activities:

- (a) Commercial Close;
- (b) Financial Close;
- (c) Substantial Completion;
- (d) Final Completion;
- (e) the Longstop Date; and
- (f) any additional activities related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “Key Works Milestones” means collectively all of the Key Works Milestones.

1.6 “Micro-Schedule Works Milestone” means any of the following milestone events:

- (a) any milestone associated with any Micro-Schedule Works Activities; and
- (b) any additional milestone related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Micro-Schedule Works Milestones**” means all of the Micro Schedule Works Milestones.

1.7 “Micro-Schedule Works Activity” means any of the following activities:

- (a) any activity in a Primavera Level 5 Schedule;
- (b) any one activity associated with the development of a Works Area Micro-Schedule; and
- (c) any activity requiring the involvement of Contracting Authority or any Contracting Authority Party, for the activity to start and/or finish, or any activity that would impact the subsequent activity or operations of Contracting Authority or any Contracting Authority Party, requiring greater detail than Secondary Activities, and activity requiring the involvement of a Contracting Authority Party for the activity to start and/or finish,

and “**Micro-Schedule Works Activities**” means collectively, all of the Micro-Schedule Works Activities.

Thunder Bay Correctional Complex Project

1.8 “Permitting, Licensing, Approval and Agreement Activity” means for each of the Permits, Licences, Approvals and Agreements, any of the following activities or milestone events associated with that Permit, Licence, Approval and Agreement:

- (a) consultation and/or coordination activities with the applicable federal, provincial, municipal authorities, utility service providers and property owners (if applicable);
- (b) preparation of documentation for the Permit, Licence, Approval and Agreement request, including pre-submission co-ordination and consultation;
- (c) review and approval of the Permit, Licence, Approval and Agreement starting on the date the submission is made by Project Co to the relevant authority and ending on the date it is anticipated the decision would be made by the relevant authority in connection with the applicable Permit, Licence, Approval and Agreement, which anticipated date of decision shall, with respect to a Listed Project Co PLAA, be consistent with the applicable Listed Project Co PLAA Deadline; and
- (d) any additional activities related to or associated with any of the foregoing for Project Co to fulfill the requirements of this Project Agreement,

and **“Permitting, Licensing, Approval and Agreement Activities”** means, collectively, all such activities.

1.9 “Primary Works Activity” means any of the following:

- (a) an activity in a Primavera Level 1, 2 and 3 Schedule;
- (b) any one activity associated with the development of the Works Schedule; and
- (c) depicting, collectively, the overall Project broken down into major components by area including, but not limited to, activities that define all Key Works Milestones, Primary Works Milestones, major elements of design, engineering, permitting, procurement, construction, testing, commissioning, start-up and/or handover,

and **“Primary Works Activities”** means, collectively, all of the Primary Works Activities.

1.10 “Primary Works Milestone” means any of the following milestones associated with the Primary Works Activities, and any other milestones required by Project Co to fulfill the requirements of the Project Agreement:

- (a) any milestone dates associated with Primary Works Activities;

and **“Primary Works Milestones”** means, collectively all of the Primary Works Milestones.

1.11 “Procurement Activity” any of the following activities or milestone events for subcontracts, long-lead or architecturally significant equipment:

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Thunder Bay Correctional Complex Project

- (a) issuance of purchase order or contract finalization;
- (b) manufacturing or assembly;
- (c) pre-delivery factory quality control and acceptance testing, delivery to site, quality assurance and material acceptance; and
- (d) any additional milestones related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Procurement Activities**” means, collectively all of the Procurement Activities.

1.12 “Review Procedure Activity” means any of the following activities or milestones in the context to review procedure:

- (a) the proposed Project Co submission of each Works Submittal (including, for certainty, each Design Development Submittal and Construction Document Submittal) indicated as an activity where the first day of the activity shall be the day on which Project Co submit the Submittal to Contracting Authority for Review followed by the Contracting Authority Review Period starting on the second day of the activity shown in the schedule and the time provided to Contracting Authority to complete the review as governed by this Project Agreement;
- (b) a buffer period to resolve outstanding non-conformance items and incorporate comments after the review of each Works Submittal before the associated construction activity commences, for clarity the buffer may be indicated as a positive lag after the Contracting Authority Review Period except for critical path construction activities for which the buffer between the preceding Contracting Authority Review Period and the construction activity shall be shown as an identifiable activity;
- (c) specific activities and approvals that are the responsibility of Contracting Authority that must coordinate with the Works; and
- (d) any additional activities related to or associated with any of the foregoing for Project Co to fulfill the requirements of this Project Agreement,

and “**Review Procedure Activities**” means all of them.

1.13 “Secondary Works Activity” means any of the following:

- (a) an activity in a Primavera Level 4 Schedule;
- (b) all Primary Works Activities developed at a greater level of detail that depicts important elements of construction; and
- (c) any activity associated with the development of the Look-ahead Schedule,

Thunder Bay Correctional Complex Project

and “**Secondary Works Activities**” means collectively all of the Secondary Works Activities.

1.14 “**Secondary Works Milestone(s)**” means any other milestone(s) as required by Project Co to fulfill the requirements of this Project Agreement.

1.15 “**Transition Activities**” means all activities related to Transition as outlined under Section 24.14(a) of the Project Agreement.

1.16 “**Utility Related Activity**” means for each system per phase or section of the Works any of the following activities:

- (a) approvals by Utility Companies;
- (b) relocation for each specific occurrence of Utilities;
- (c) inspection, acceptance and hand-back of the Utilities to the Utility Companies; and
- (d) any other activity related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Utility Related Activities**” means, collectively all of the Utility Related Activities.

APPENDIX C

[INTENTIONALLY DELETED]

APPENDIX D

MAJOR WORKS ELEMENTS AND PRIMARY AND SECONDARY COMPONENTS

Major Works Element are defined as:	Primary component for each Major Works Element:	Secondary components for each Major Works Element:
Project milestones	Works Milestones	Key Works Milestones
		Primary Works Milestones
		Secondary Works Milestones
		Micro-Schedule Works Milestones
		Municipal and any other approvals required to achieve the Project milestones
Design Development Activities	Design Development Submittals and user group meetings	50% Design Development Submittals
		100% Design Development Submittals
	Construction Documents Submittals and user group meetings	50% Construction Documents Submittals
		100% Construction Documents Submittals
Procurement Activities	All major components by procurement package	As required by definition
Performance of the Works	Mobilization	All major components by area
	Site servicing	All major components by area

Thunder Bay Correctional Complex Project

Major Works Element are defined as:	Primary component for each Major Works Element:	Secondary components for each Major Works Element:
	Site access	All major components by area
	Excavations	All major components by area
	Foundations	All major components by area
	Structure	All major components by area
	Building envelope	All major components by area
	M/E/P/I	All major components by area
	Integrated Security System	All major components by area
	Interior finishes	All major components by area
	ICAT	All major components by area
	Vertical transportation	All major components by area
	Above-grade site works and landscaping	All major components by area
Utility Related Activities	All major components by Utility, including as related to removal, relocation, installation, inspection and acceptance of Utilities	As required by definition
Commissioning Activities	All major components by system	As required by definition
Close-Out Activities	All major Close-Out Activities required for achieving Substantial Completion	As required by definition

Thunder Bay Correctional Complex Project

Major Works Element are defined as:	Primary component for each Major Works Element:	Secondary components for each Major Works Element:
	All major Close-Out Activities required for achieving Final Completion	As required by definition
	All major Close-Out Activities required for achieving LEED certification	As required by definition
Equipment Procurement and Installation Activities	All major activities required to complete FF&E inventory	As required by definition
	All major activities required to complete planning requirements related to FF&E, including procurement, delivery, installation, setup, commissioning and training	As required by definition
Transition Activities	All major activities required to complete Transition, including as required to obtain the Occupancy Permit	As required by definition

APPENDIX E**WORKS SCHEDULE TECHNICAL REQUIREMENTS****1. WORKS SCHEDULE TECHNICAL REQUIREMENTS**

- 1.1. Project Co shall generate the Project Schedules using Primavera 6.0 that supports the completion of the Works in accordance with Section 20.1 of the Project Agreement. Where software specific terminology is used in this Schedule 12 to defined specific requirements, Project Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output.
- 1.2. Project Co shall use critical path methodology that uses the sequence of activities that represents the longest path through the Works to determine the shortest possible project duration to complete the Works.
- 1.3. The title-block of any of the Project Schedule document shall include:
 - (a) Project title;
 - (b) Unique project identifier number;
 - (c) Title of the document (i.e. “Proposed Works Schedule”, “Draft Works Schedule”, “Works Schedule (baseline)”, “Revised Works Schedule (revised baseline)”, “Recovery Schedule”, “Progress Works Schedule”, “Look-ahead Schedule”, or “Works Area Micro-Schedule”);
 - (d) Works Schedule (baseline) Version number, and the date on which the Works Schedule was agreed. If the Works Schedule has not been agreed, state “not-agreed” instead of a date;
 - (e) Schedule Status Date, when applicable;
 - (f) Version number;
 - (g) Author name;
 - (h) Date on which the document was published for distribution (Schedule Status Date being “as of mmyyyydd”), and
 - (i) Any other information as required pursuant to this Project Agreement.
- 1.4. The Progress Works Schedule, Look-ahead Schedule and Works Area Micro-Schedule shall include the current progress of the Works as of the Schedule Status Date of the specific Project Schedule, including:

- (a) the percentage completion for each schedule activity and the expected date of completion of each milestone. For clarity, the percentage represents the physical percentage of completion of the underlying Works Activity and does not represent payment progress;
- (b) the actual start date for all in progress activities;
- (c) the actual start and end date for all completed activities;
- (d) the actual date for each milestone achieved;
- (e) the current forecast duration, start and end date for each of the remaining activities; and
- (f) the current forecast date to achieve each of the remaining milestones.

For clarity, the actual as-built information described in 1.4(a) – 1.4(d) above, shall not be changed unless agreed to in writing by Contracting Authority.

1.5. Project Co shall:

- (a) identify activities in a graphical, time-scaled, horizontal bar chart format;
- (b) group the activities to clearly identify Works of separate stages where the completion of a stage of Works or completion of a series of linked stages results in the achievement of one of the Key Works Milestones, and each Key Works Milestone shall be the finish milestone for the series of staged Works;
- (c) employ project level user defined activity codes that allows for the classification, categorizing and organising of each Works Activities and Works Milestone to filter, select and sort the Works Activities and Works Milestones for reporting and analytical purposes based on who is carrying out the work, the stage of the works, and section as agreed to with Contracting Authority. All activity codes shall be unique and shall have appropriately defined unique definitions using consistent and intuitive terminology that would be understandable to Contracting Authority;
- (d) employ a coding scheme and activity grouping in the Project Schedules to ensure that each of the Project Schedule deliverables can be generated through the appropriate roll-up of activities. For clarity, each defined higher order activity may act as a summary of the lower order activities representing the overall effort to complete the higher order activity, include sufficient detail to identify the major activities and milestones for planning, coordination, progress and earned value assessment purposes;
- (e) utilize colour coding of work breakdown structure and other visual means to facilitate the understanding of the Project Schedules by Contracting Authority;

- (f) for each Works Activity, Works Milestone or any other activity or milestone included in the Project Schedules, at least include:
 - (i) a unique activity ID that shall be alpha-numeric starting with a letter
 - (ii) a unique name or description using consistent and intuitive terminology that would be understandable to Contracting Authority and only using activity descriptions that begin with a verb or work function followed by an object. The description shall not include percentages and shall, where applicable, contain a location
 - (iii) early and late start dates, each with a starting time set as the intended work start time for each work day, but in any event before noon of the specific day;
 - (iv) early and late finish dates, each with a finish time set as the intended work finish time for each work day, but in any event after noon of the specific day;
 - (v) actual start and actual finish dates, and Project Co shall include:
 - A. an actual start date for all activities with progress registered, and provide the physical % progress for all activities with an actual start date; and
 - B. an actual finish date for all activities with 100% progress, and 100% physical progress registered for all activities with an actual finish date;
 - (vi) original planned duration as defined by the Works Schedule, indicated as work days and not calendar days, which duration shall be the most-likely duration and used for the critical path calculation and shall be at least one work day long. Zero duration activities shall be coded as milestones and not activities;
 - (vii) for every Works Activity on the critical path or any Works Activity with a float less than 20 Working Days, the shortest expected activity duration, to be used for schedule probability and sensitivity analysis;
 - (viii) for every Works Activity on the critical path or any Works Activity with a float less than 20 Working Days, the longest expected duration, to be used for schedule probability and sensitivity analysis;
 - (ix) physical % completion, for clarity, all activities shall use the same percentage completion type representing the physical completion of the

- activity, and shall not use any other completion type i.e. duration completion, payment percentage etc.;
- (x) remaining duration, manually entered or calculated when entering the physical % completion and the expected finish date;
 - (xi) actual duration for all completed activities;
 - (xii) calendar assigned;
 - (xiii) total float or slack (e.g. the amount of time that the activity can be delayed without delaying the Substantial Completion Date);
 - (xiv) free float (i.e. the amount of time that the activity can be delayed without delaying the early start of its successor activity);
 - (xv) relationship with other activities and milestones; and
 - (xvi) activity or milestone lag;
 - (xvii) user defined field “works location” to indicate the related activity code defining the location where the Works Activity is performed on or off the Site in a format and location referencing system agreed to by Contracting Authority;
 - (xviii) user defined field “responsible” to indicate the related activity code defining the entity responsible to complete the Works Activity or Works Milestone (e.g. “Contracting Authority”, “Project Co”, “Supplier X” etc.);
 - (xix) user defined field “works phase” to indicate the related activity code defining the activity type which shall either be “approvals & permits”, “Contracting Authority Review”, “site establishment”, “procurement”, “construction”, “commissioning”, “transition” or “project close-out”; and
 - (xx) any other user defined fields, as needed to comply with the requirements of this Project Agreement;
- (g) only use the “task dependent” activity type for all Works Activities, and shall only use a “WBS summary” activity type if the Project Schedules remain logical and the critical path calculation is unaffected by the deletion of any activity defined as a “WBS summary”;
- (h) include inter-relationships and logic dependencies between all Works Activities, Works Milestones or any other activities or milestones included in the Project Schedules, and Project Co shall:

- (i) use closed sequence logic for each Works Activity, for clarity, each Works Activity shall have at least one predecessor and at least one successor, and each Works Activity shall have a start and a finish relationship;
- (ii) use closed sequence logic for each Works Milestone, for clarity, each Works Milestone shall have at least one predecessor except for the first Works Milestone denoting Financial Close, and have at least one successor except for the last Works Milestone denoting the Final Completion Date, and each Works Milestone except for the first and last shall have a start and a finish relationship;
- (iii) not use the start-to-finish (SF) activity relationship type between activities unless otherwise agreed to by Contracting Authority;
- (iv) for each start milestone only define a finish-to-start (FS) or start-to-start (SS) relationship with its predecessor, a start-to-start (SS) or start-to-finish (SF) relationship with its successor, a start-to-start (SS) relationship with any other start milestone, or a start-to-finish (SF) relationship to a finish milestone;
- (v) for each finish milestone only define a finish-to-finish (FF) or start-to-finish (SF) relationship with its predecessor, a finish-to-start (FS) or finish-to-finish (FF) relationship with its successor, a finish-to-start (FS) relationship to any other start milestone, or a finish-to-finish (FF) with any other finish milestone;
- (vi) not use a negative lag between any Works Activities and/or Works Milestones;
- (vii) not use positive lag between Works Activities and/or Works Milestones upon substantiation by Project Co and acceptance by Contracting Authority, to model a specific waiting duration for a process directly related to the preceding Works Activity (e.g. concrete curing time);
- (viii) for any two Works Activities or Works Milestones with a start-to-start (SS) relations define a lag no longer than the duration of the predecessor duration;
- (ix) open start and open-finish relationships are not permitted in the schedule. The only exceptions will be Financial Close and Final Completion milestones
- (x) not use reverse logic, for clarity, a Works Activity shall not have a finish-to-finish relationship with a predecessor, and a Works Activity shall not have a start-to-start (SS) relationship with a successor; and

- (xi) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair;
 - (xii) out-of-sequence relationships where an activity has started, and the predecessor activity has not finished shall not be modified or removed for schedule activities related to or logically linked to Lands or Design Submittals.
 - (xiii) out-of-sequence relationships that are not logically linked to Lands or Design Submittals shall be modified or removed to clear the out-of-sequence relationship.
 - (xiv) Project Co shall not change the activity name for any Project Schedule activity unless required by this Schedule 12 or agreed to by Contracting Authority;
 - (xv) activity ID shall not be changed between any Project Schedule revisions unless agreed to by Contracting Authority
- (i) use unconstrained sequencing logic and Project Co shall not use imposed date constraints to replace or limit sequencing logic for any Works Activity or Works Milestone, except for the first starting milestone defining the Financial Close date, unless it is impossible to sequence the work otherwise. When a constraint is used it shall only be of the “start-no-earlier than” or “finish-no-later than” constraint types. For every imposed date constraint used Project Co shall provide a narrative in the Works Report detailing the reason for using the imposed date constraint and the scheduling methodology used to prevent inaccuracy when calculating the critical path and available float. For clarity, Project Co shall never use the “Expected finish”, “Start on”, “Finish on”, “Mandatory start”, “Mandatory finish”, or any other similar constraint type, nor any other constraint type that would impact on the float calculations to determine the critical path;
 - (j) reflect the constraints related to allowable hours of work on the Site, or any other schedule related restrictions in establishing the calendars, logical relationships and durations for the activities;
 - (k) define and use appropriate non-global project level activity based calendars, and for each calendar define:
 - (i) a descriptive calendar name using intuitive terminology that would be understandable to Contracting Authority;
 - (ii) the intended Working Days and working hours conforming to the requirements of the Project Agreement and any other governing approvals

and permits that are used as the basis for critical path calculations, and all non-Working Days;

- (iii) all non-Working Days including, but not limited to, all public holidays for the full project timeframe;
- (iv) the first day of each work week as a Monday; and
- (v) the starting time for each work day to the intended normal starting time, but in any event no later than noon, and set the finish time for each work day to the intended normal finish time, but in any event no earlier than noon of the day;

for clarity, global calendars shall not be used. Project Co shall minimize the number of calendars used;

- (l) only specify activity durations using full Working Days and shall not use fractional durations (i.e. 5.5 days);
- (m) schedule the Works to minimize the effects of adverse weather and to allow for protection of the Site from such effects;
- (n) ensure durations for any Works Activity except for single process-step activities (such as manufacturing time and delivery periods, etc.) and activities are as follows:
 - (i) any Works Activity shall not be less than one Working day and no more than 20 Working Days; and
 - (ii) Micro-Schedule Works Activity duration shall be no more than 5 Working Days and such duration shall be determined on an hour by hour basis, as necessary or required,

or as otherwise agreed to between the Parties;

- (o) determine and indicate the critical path applicable to achieve Substantial Completion where each critical path shall:
 - (i) be calculated using the “retained logic” scheduling methodology and shall not use a progress override option;
 - (ii) not include any “level of effort” type activities, for clarity, all activities on the critical path shall be task dependent activities;
 - (iii) be the result of an unmodified software calculation of the critical path using the critical path method, for clarity Project Co shall not employ any

- additional filters or any other manual manipulation whatsoever to calculate the critical path;
- (iv) be continuous and logic driven; and
 - (v) consist only of activities with a float of zero;
 - (p) in situations where the same critical path is not identified as calculated using the software's various standard critical path filters, provide all critical path alternatives together with Project Co's narrative on which critical path is most representative of the Works; and
 - (q) when required to do so by Contracting Authority, indicate all near-critical activities, i.e. activities with a total float of up to 5 Working Days.

1.6. Deleted Works Activity

- (a) no Works Activity or Milestone shall be deleted from any Project Schedule for any reason unless accepted by Contracting Authority that an activity or group of activities are no longer required (related to the Works represented by those activities that have been removed from the Project Agreement);
- (b) in case Project Co intends to retire a schedule activity within any Progress Works Schedule for any reason, a "retired activities" node shall be created at WBS level 1 and to enable a retired activity to be moved to "retired activities" WBS band;
- (c) for any "retired activities", all logic dependencies shall be removed for that activity;
- (d) the Progress Works Schedule logic shall be adjusted to ensure that the removal of any deleted activities does not leave any open ends and that the integrity of the schedule logic is not compromised;
- (e) a start and finish milestone (with an appropriate description) shall be added to the Work Breakdown Structure on the first instance of an activity deletion. The start milestone shall have a predecessor of Financial Close Date and the finish milestone a successor of Final Completion. These milestones shall be used as the predecessor and successor to the deleted activities to ensure that they do not appear in any open ended report;
- (f) all deleted Work activities shall have an actual start date and finish date applied applicable to the month and year of deletion (the day prior to the data date of that month) and at completion duration of zero days;

- (g) remove all activity codes, cost and resource values assigned to that activity, reassign cost and resource values associated to that activity to a “not-started” activity in the schedule;
- (h) explain in the scheduling software “Notebook” section the reason for retirement of that activity (subject to agreement with Contracting Authority).

1.7. Guides and Standards

- (a) In addition to complying with the provisions of the Project Agreement and this Schedule 12, Project Co shall provide all Project Schedules in accordance with the following:
 - (i) A Guide to the Project Management Body of Knowledge (PMBOK® Guide)- Sixth Edition;
 - (ii) Construction Extension to the PMBOK Guide -Third Edition;
 - (iii) AACE International Recommended Practice 37R-06, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”;
 - (iv) AACE International Recommended Practice 38R-06, “Documenting the Schedule Basis”
 - (v) The Practice Standard for Work Breakdown Structures (PMI) – Third Edition; and
 - (vi) The Practice Standard for Scheduling (PMI) - Third Edition;

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

**SCHEDULE 14
OUTLINE COMMISSIONING PROGRAM**

[REDACTED]

**SCHEDULE 15
OUTPUT SPECIFICATIONS**

[REDACTED]

SCHEDULE 16

TITLE ENCUMBRANCES

The Title Encumbrances for the Project are, collectively, the following “Specific Title Encumbrances” and “General Title Encumbrances”:

I. SPECIFIC TITLE ENCUMBRANCES

With regard to the specific Title Encumbrances registered against title to and affecting the Lands:

PIN 62247-0029 (LT)

LT 23-25 CON 4 SKR NEEBING; PT LT 22 CON 4 SKR NEEBING AS IN NBG3082 N OF PT 1 TBR265675; THUNDER BAY.

1. Instrument No. **TBR263881**, registered June 4, 1985, is an Order containing a report of the Committee of the Executive Council dated June 5, 1912, whereby the land is placed in the name of The Minister of Public Works.

PIN 62261-0061 (LT)

PT LT 22 CON 4 SKR NEEBING AS IN NBG3082 S OF HWY 61; THUNDER BAY.

1. None.

PIN 62261-0060 (LT)

PT LT 23 CON 4 SKR NEEBING LYING S OF HWY #61; THUNDER BAY.

1. Instrument No. **TBR263881**, registered June 4, 1985, is an Order containing a report of the Committee of the Executive Council dated June 5, 1912, whereby the land is placed in the name of The Minister of Public Works.

PIN 62261-0004 (LT)

LT 23-25 CON 5 SKR NEEBING EXCEPT PT 1, 55R6128, PT 5 OFW59602, OFW23928; THUNDER BAY.

1. Instrument No. **NBG1844**, registered August 14, 1915, is an Order in Council, whereby the land is expropriated by The Minister of Public Works under the provisions of the *Public Works Act*.
2. Instrument No. **TBR263881**, registered June 4, 1985, is an Order containing a report of the Committee of the Executive Council dated June 5, 1912, whereby the land is placed in the name of The Minister of Public Works.

II. GENERAL TITLE ENCUMBRANCES

1. Liens, charges or prior claims for taxes (which term includes charges, rates, levies and assessments) or utilities (including levies or imposts for sewers and other municipal

Thunder Bay Correctional Complex Project

- utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
2. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against any of the Lands or of which notice in writing shall not at the time have been given to Contracting Authority pursuant to the *Construction Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Contracting Authority has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom.
 3. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
 4. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
 5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
 6. Servitudes, easements, rights-of-way, or other similar rights in land for sewers, electric lines, telegraphs and telephone lines and other utilities and services which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
 7. Minor encroachments onto or from neighboring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
 8. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.
 9. Registered subdivision, site-plan, development or other municipal agreements, if any, provided such are complied with and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
 10. The exceptions and qualifications contained in subsection 44(1) of the *Land Titles Act* (Ontario) except for paragraphs 11 (Subdivision Control).

SCHEDULE 17

[INTENTIONALLY DELETED]

SCHEDULE 18

COMMUNICATIONS

1. DEFINITIONS

1.1 In this Schedule 18, unless the context otherwise requires:

- (a) “**Communications Protocol**” has the meaning given in Section 3.1(e);
- (b) “**Communications and Stakeholder Relations Plan**” has the meaning given in Section 4.2(a); and
- (c) “**Crisis Communications Plan**” has the meaning given in Section 4.2(b).

2. GENERAL

2.1 Communications Principles

- (a) During the Project Term, Contracting Authority and Project Co shall, in accordance with the provisions of this Schedule 18, work together to deliver communications and public engagement activities in respect of the Project that will:
 - (i) enhance opportunities for open, transparent, effective and proactive communications with the public;
 - (ii) recognize the contributions of the Parties; and
 - (iii) be accountable to the Project’s stakeholders (including Contracting Authority’s community) for the effective implementation of the Communications Protocol, the Communications and Stakeholder Relations Plan and the Crisis Communications Plan.
- (b) The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive Communications Protocol, Communications and Stakeholder Relations Plan and Crisis Communications Plan are required to allow the Parties to ensure the public is informed and engaged in respect of the Project where necessary, to meet Contracting Authority and SolGen’s communications requirements, and to support effective communications between Project Co and Contracting Authority and with Contracting Authority’s stakeholders.

3. COMMUNICATIONS PROTOCOL

3.1 Project Co's Communications Protocol

- (a) No later than 45 days following Financial Close and in collaboration with Contracting Authority and IO, Project Co shall prepare and submit to Contracting Authority a comprehensive and detailed draft communications protocol for the Project in accordance with this Section 3.1.
- (b) The draft communications protocol shall:
 - (i) be in compliance with Project Co's obligations under the Project Agreement, including this Schedule 18;
 - (ii) outline communication roles and responsibilities for the Project; and
 - (iii) assist Contracting Authority in the development and implementation of the Communications and Stakeholder Relations Plan.
- (c) Within the draft communications protocol, Project Co shall submit a description of Project Co's approach to all communications with respect to the Project, which shall include:
 - (i) a description of Project Co's communications team, including the roles and responsibilities of each team member and each Project Co Party who shall implement any aspect of the Communications Protocol;
 - (ii) the identification of proposed communications tools to be used by Project Co and each applicable Project Co Party to coordinate with and report to Contracting Authority and SolGen during the Project Term; and
 - (iii) the other matters described in Appendix "A"– Communications Protocol Template to this Schedule 18.
- (d) The draft communications protocol shall be (i) based on the template attached as Appendix "A" – Communications Protocol Template to this Schedule 18 and (ii) consistent with the outline of the communications protocol attached hereto as Appendix "B" – Outline Communications Protocol to this Schedule 18.
- (e) The draft communications protocol shall be subject to the review and approval of Contracting Authority (in consultation with SolGen) and, once approved by Contracting Authority, the draft communications protocol shall, for the purposes of this Project Agreement, be the "**Communications Protocol**".
- (f) The Communications Protocol shall apply to all print and electronic communications related to the Project, including, but not limited to, with respect to the Project's planning, design, construction, milestones, tenders, community

and other stakeholder relations, media relations, website information, branded products and social media updates and responses.

- (g) In the event of any ambiguity, conflict or inconsistency between the provisions of this Schedule 18 and the Communications Protocol, the provisions of this Schedule 18 shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. CONTRACTING AUTHORITY RESPONSIBILITIES

4.1 Lead Communications Role

Contracting Authority shall assume the lead communications role and shall be responsible for:

- (a) providing identified, dedicated lead communications contacts with reasonable applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project and designating Project Co to be spokesperson on any given issue, to be determined by and as set out in the Communications Protocol;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

4.2 Contracting Authority Communications Responsibilities During the Works Phase

In the period up to the Substantial Completion Date, Contracting Authority shall be responsible for the following matters:

- (a) **Communications:** To develop and implement, in cooperation with Project Co and SolGen, a comprehensive communications and stakeholder relations plan (the “**Communications and Stakeholder Relations Plan**”) that includes Contracting Authority’s approach to community relations, media relations, marketing, special events, employee communications and government relations regarding issues

related to the Project. The Communications and Stakeholder Relations Plan shall be developed by Contracting Authority, following consultation with Project Co, by the later of (i) the date that is 90 days following Financial Close, and (ii) 15 Business Days following the date of the finalization of the Communications Protocol pursuant to Section 3.1(e).

- (b) **Crisis Communications:** To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A crisis communications plan (the “**Crisis Communications Plan**”) shall be developed by Contracting Authority within 30 days following Financial Close, outlining the roles and responsibilities of both Contracting Authority and Project Co during a crisis situation.
- (c) **Issues Management:** To collaborate with Project Co in identifying issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders.
- (d) **Website and Social Media:** Working with Project Co to:
 - (i) lead the planning, development and maintenance of a Project-related website or Project-specific web pages on Contracting Authority’s website; and
 - (ii) lead the planning, development and execution of a social media strategy for the Project, which may include timely responses to public inquiries, notification of public meetings and/or responses to issues and crisis situations.
- (e) **Government Relations:** To liaise with affected Governmental Authorities to provide information about the Project’s status, upcoming milestones and events, and issues that may affect the Project.
- (f) **Special Events:** To work with Project Co to develop, plan, coordinate and implement special events, such as construction tours and milestone celebrations.
- (g) **Correctional Facility Related Communication:** To provide all communications related to the provision of the Correctional Complex Activities.
- (h) **Performance Review:** To review, on a periodic basis, Project Co’s performance in providing communications support as outlined in Section 5 of this Schedule 18.

4.3 Contracting Authority Communications Responsibilities During the Operational Term

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term, which shall

upon the finalization of such communications protocol, replace the existing Communications Protocol and become the new “Communications Protocol” for the purposes of this Schedule 18.

5. PROJECT CO RESPONSIBILITIES

5.1 Support Communications Role

- (a) Project Co shall assume an active role with respect to communications related to the Project, providing support to Contracting Authority in the creation and delivery of a successful communications program. Project Co shall, from time to time, be responsible for:
 - (i) providing an identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
 - (ii) responding to communications issues in accordance with the Communications Protocol and with the agreed timeframes set out in the Communications Protocol;
 - (iii) reviewing and/or providing communications and/or technical materials reasonably requested by Contracting Authority for website content;
 - (iv) updating, in collaboration with Contracting Authority, internal/ external stakeholders, as required, including involvement and participation in community events;
 - (v) providing Contracting Authority and SolGen access to the Site for milestone events, including making persons available to lead media tours and/or tours for government or Contracting Authority officials, as required;
 - (vi) directing all media enquiries and interview requests to Contracting Authority’s lead communications contact and working with Contracting Authority to identify which party shall respond to the media enquiries as identified in the Communications Protocol;
 - (vii) maintaining a written record of all material public enquiries, complaints and communications and providing copies to Contracting Authority’s lead communications contact on a weekly basis (or immediately, if urgently requested by Contracting Authority);
 - (viii) reporting to Contracting Authority on communications matters on an agreed upon basis;

- (ix) providing support for the Project’s websites, web pages and social media by providing written and multimedia content, including:
 - (1) up-to-date professional quality (high resolution) photos and videos, including pursuant to Section 5.1(b);
 - (2) information about the project design, project features, benefits and construction activities; and
 - (3) statistics about local workers/companies, training and local investments;
 - (x) participating in regular communications committee meetings, as required by Contracting Authority; and
 - (xi) during a crisis situation, ensuring and making available sufficient resources to work effectively with Contracting Authority and proactively manage and perform its communications responsibilities; and
- (b) Project Co shall also be responsible for the following:
- (i) Prior to the Substantial Completion Date:
 - (1) installing a high-definition camera and providing broadcast-ready professional quality (high resolution) images and footage capturing the construction of the Project at the Site from start to finish. This shall include photographs taken 5 to 6 times per hour and, if desired by Contracting Authority or SolGen, shall also include live-streaming of construction of the Project at the Site;
 - (2) hosting and maintaining a website for the images and footage suitable for public access and viewing;
 - (3) providing ongoing monitoring of camera feed to ensure photographs continue to be taken and any and all service interruptions are resolved quickly;
 - (4) providing to Contracting Authority and/or SolGen, upon request, professional quality (high resolution) individual photos to demonstrate construction progress on an as-needed basis; and
 - (5) obtaining all of the rights necessary for Project Co, Contracting Authority and SolGen to use, reproduce, modify and brand all of the images and footage described in this Section 5.1(b) without restrictions; and

- (ii) at any time following the Substantial Completion Date, providing to Contracting Authority and/or SolGen, upon request, a professional quality (high resolution) time-lapse video with music capturing the construction of the Project at the Site from start to finish.

5.2 Project Co Communications Responsibilities During the Works Phase

In the period up to the Substantial Completion Date, Project Co shall:

- (a) implement and maintain the Communications Protocol, provided that Project Co shall coordinate with Contracting Authority in respect of such implementation;
- (b) update, in coordination with Contracting Authority, the Communications Protocol on an annual basis or as otherwise reasonably requested by Contracting Authority;
- (c) collaborate with Contracting Authority on the development and implementation of the Communications and Stakeholder Relations Plan and the Crisis Communications Plan;
- (d) attend regular meetings with Contracting Authority to discuss communication issues and developments;
- (e) produce monthly progress reports, which shall include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through Contracting Authority, provide regular updates to any affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This shall include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints in respect of noise, hours of work, dust, traffic etc.);
- (g) collaborate with Contracting Authority to identify issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders;
- (h) seek and identify opportunities for Project recognition through industry award programs;
- (i) develop content for review and approval by Contracting Authority as required for Project award submissions;
- (j) provide support for Contracting Authority on the development of a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and

- (k) follow any guidelines provided by Contracting Authority related to signage or advertising at the Site.

5.3 Project Co Communications Responsibilities During the Operational Term

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term, which shall upon the finalization of such communications protocol, replace the existing Communications Protocol and become the new “Communications Protocol” for the purposes of this Schedule 18.

6. PUBLIC DISCLOSURE AND MEDIA RELEASES

6.1 Public Disclosure and Media Releases

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Correctional Complex Activities, or any matters related thereto, without the prior written consent of the Contracting Authority, in its sole discretion, or, in the case of any media release, public announcement or public disclosure required by Applicable Law, without the prior written consent of Contracting Authority.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party’s name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Correctional Complex Activities, or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with the Communications Protocol.

7. CONSTRUCTION SIGNAGE

7.1 Construction Signage Guidelines

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, the Project Co Parties and the Lenders, as applicable, shall:

- (a) include the SolGen logo and IO’s logo on the sign;

Thunder Bay Correctional Complex Project

- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the Site or (ii) 16 feet by 8 feet;
- (c) comply with Applicable Law, including by-laws regarding the placement and size of signage;
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to Contracting Authority Representative for written approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

7.2 Contracting Authority and SolGen Signage

Without prejudice to Section 7.1, at the request of Contracting Authority, Project Co shall, from time to time, install and maintain signage provided by Contracting Authority or SolGen in a prominent location on the fencing or hoarding or at some other location, as requested by Contracting Authority or SolGen, on the Site.

8. ACCESSIBILITY

8.1 Accessibility

Project Co shall ensure that all communications materials with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario) and all regulations thereunder, and for the purposes thereof, as between Project Co and Contracting Authority, Project Co shall be deemed to be a “designated public sector organization” under such Act and regulations.

9. FAILURE TO PERFORM

Without limiting any other right of Contracting Authority or obligation of Project Co in the Project Agreement, if Project Co at any time fails to perform or comply with any of its obligations under this Schedule 18 (including, for greater certainty, under the Communications Protocol), Contracting Authority may itself, to the extent possible, perform or cause compliance with or engage others to perform or cause compliance with such obligation, at the risk and cost of Project Co, and Contracting Authority may deduct the cost of such activities from any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, provided that, except in the event that Contracting Authority is of the reasonable opinion that such activities must be performed immediately, at least five Business Days prior written notice setting out the precise failure of Project Co is delivered by Contracting Authority to Project Co and, following the receipt of such notice, Project Co fails to commence to diligently and expeditiously

perform or comply with its obligations under this Schedule 18 to the reasonable satisfaction of Contracting Authority.

APPENDIX “A”

COMMUNICATIONS PROTOCOL TEMPLATE

I. Project Co’s Communications Team

No.	Name of Project Co or Project Co Party	Project Member Contact	Co Team Name and Information	Role and Responsibility of Team Member
1.	[REDACTED]	[REDACTED]		[REDACTED]
2.	[REDACTED]	[REDACTED]		[REDACTED]
3.	[REDACTED]	[REDACTED]		[REDACTED]
4.	[REDACTED]	[REDACTED]		[REDACTED]

II. Proposed Communications Tools

No.	Proposed Communications Tool	Description
1.	On-site Webcam	<p>The Webcam will be erected on site to provide real time on-line access to view construction progress.</p> <p>Webcam access will be from the Project webpage.</p>
2.	Project Webpage	<p>The Project webpage will provide regular construction updates and required notifications as to any activities that may impact the Facility and/or surrounding community. Project Co will work closely with the Contracting Authority communications representative to provide website content and materials such as Project statistics, Project features and milestone events, for publication on the Project webpage.</p>
3.	Electronic Newsletter, Email and/or Flyer Notifications	<p>Any major activities or events will be communicated to the Facility users and surrounding community via electronic newsletter, email and/or flyer notifications, forecasting and providing awareness and necessary instructions well in advance.</p> <p>Electronic newsletters will be posted to the Project webpage.</p>

III. Roles and Responsibilities

To delineate the roles and responsibilities of Contracting Authority, SolGen and Project Co, the following chart outlines general communications activities and expectations during the Project Term:

Area/Task	Contracting Authority	SolGen	Project Co
Issues tracking and management	Track and monitor issues related to procurement, public-private partnerships (P3s), cost and ensure partners are informed. Where necessary, develop issues notes, key messages and questions and answers lists and share with partners.	Track and monitor issues related to the overall Project scope and program to ensure partners are informed. Where necessary, develop issues notes, key messages and questions and answers lists and share with partners.	Identify issues as they emerge and forward to Contracting Authority for response. Work with Contracting Authority and SolGen to develop messages and implement strategies. Respond to issues identified by Contracting Authority and SolGen as required.
Government Relations, inclusive of City, Province and Federal	Responsible for liaising with affected local governments, boards and executives, and federal elected officials, providing whatever information is required/requested about the Project.	Supports Contracting Authority as requested.	Provides support to Contracting Authority as requested, including but not limited to: providing collateral (renderings, maps, images) and updates (construction and maintenance schedule, issue overview, attendance at meetings).

Thunder Bay Correctional Complex Project

Area/Task	Contracting Authority	SolGen	Project Co
Media Relations	<p>Will lead and support questions about the procurement, public-private partnerships, cost and overall contract.</p> <p>Will be overall communications lead distributing inquiries to applicable parties as noted. Will lead in answering questions about the project, project benefits, operations, etc.</p> <p>Completes media contact report and forwards to Ministries.</p>	<p>Completes media contact report and forward to Ministries.</p>	<p>Will lead and support questions about its team members, Project schedule, labour, etc.</p> <p>For all media inquiries received, forward to Contracting Authority who will determine appropriate party to respond. Work with Contracting Authority to develop messaging and support.</p>
Community Relations/ Stakeholder Relations	<p>Oversees/directs/leads community relations.</p> <p>Provides messaging related local knowledge initiatives as well as to fact check information about public-private partnerships.</p>	<p>Oversees/directs/leads stakeholder relations.</p>	<p>Support Contracting Authority and SolGen to carry out community and stakeholder relations as required, including but not limited to, providing collateral (renderings, maps, images) and updates (construction/maintenance schedule, issue overview, attendance at meetings).</p>

Thunder Bay Correctional Complex Project

Area/Task	Contracting Authority	SolGen	Project Co
Crisis Communications	Lead the development of the Crisis Communications Plan in collaboration with Project Co within 30 days of Financial Close.	Provide input to Contracting Authority and templates, if required, for development of Crisis Communications Plan.	Provide support for Contracting Authority in development of Crisis Communications Plan to outline roles and responsibilities in the event of a crisis, as well as key contact individuals on the Site.

APPENDIX “B”

OUTLINE COMMUNICATIONS PROTOCOL

[REDACTED]

**SCHEDULE 19
CONSTRUCTION PERIOD PAYMENTS**

[REDACTED]

SCHEDULE 20

PAYMENT MECHANISM

PART A:
DEFINITIONS

1. DEFINITIONS

1.1 “**Accessibility Condition**” means a state or condition of the relevant Functional Part or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Part to enter and leave the Functional Part safely and conveniently and using normal access routes. For the avoidance of doubt, in the event of an Elevator Availability Failure, it shall be assumed that Contracting Authority’s access to Level 1 and Level 2 of the Facility has been impaired and there shall be an Elevator Availability Failure Deduction.

1.2 “**Ad-Hoc Services**” has the meaning given in Part IV of Schedule 15 – Output Specifications.

1.3 “**Ad-Hoc Services Request**” means a request for the provision of Ad-Hoc Services made by Contracting Authority to Project Co in accordance with Schedule 15 – Output Specifications.

1.4 “**Adjusted Service Payment**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B of this Schedule 20 without deducting the sums represented by the symbol ΣD .

1.5 “**Annual Service Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Section 2 of Part B of this Schedule 20.

1.6 “**Area Weighting Percentage**” means the percentage weighting ascribed to the relevant Functional Area for the purpose of calculating Deductions for Availability Failures as set out in Appendix C to this Schedule 20.

1.7 “**Availability Condition**” means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.

1.8 “**Availability Failure**” means an Event which has not been Rectified within the relevant Rectification Time and which causes a Functional Part to be Unavailable.

1.9 “**Availability Failure Deduction**” means a Deduction which may be made in respect of an Availability Failure.

1.10 “**Base Date**” means April 1, 2022.

1.11 “**Bedding-In Period**” means the 180 calendar day period following the Payment Commencement Date.

Thunder Bay Correctional Complex Project

1.12 “**Contract Day**” means a 24 hour period commencing at midnight at the start of the relevant day.

1.13 “**Contract Month**” means a calendar month, except with respect to the first Contract Month, which runs from the Payment Commencement Date until the end of the calendar month in which the Payment Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.

1.14 “**Contract Year**” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:

- (a) the first Contract Year shall be such period that commences on the Payment Commencement Date and ends on the next ensuing March 31st; and
- (b) the final Contract Year shall be such period that commences on the April 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.

1.15 “**Deduction**” means a deduction made from a Monthly Service Payment in accordance with this Schedule 20.

1.16 “**Elevator Availability Failure**” means an Event which has not been Rectified in the Rectification Time and which impacts on Contracting Authority’s ability to access and/or use the elevator(s) in question. For the avoidance of doubt, in these circumstances it shall be assumed that the Accessibility Condition has been breached and that Contracting Authority’s access to Level 1 and Level 2 of the Facility is impaired. .

1.17 “**Elevator Availability Failure Deduction**” means a Deduction which may be made in respect of an Elevator Availability Failure as calculated in accordance with the provisions set out in Section 4 of Part C of this Schedule 20.

1.18 “**Energy Failure**” means any failure by Project Co to provide the Project Co Services in accordance with the Performance Indicators designated Failure Type “EF” in Schedule 15 – Output Specifications.

1.19 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 4.1 of Part B of this Schedule 20.

1.20 “**Event**” means an incident or state of affairs which does not meet or comply with the Performance Indicators set out in Schedule 15 – Output Specifications and/or results in an Availability Condition not being met in a Functional Part. An Event is capable of becoming:

- (a) in addition to the Service Failure in Part (b), an Availability Failure, if it results in an Availability Condition being breached in a Functional Part and the Event is not Rectified within the Rectification Time; or an additional Service Failure if no Availability Condition has been breached; and

Thunder Bay Correctional Complex Project

- (b) a Service Failure, if the Event is not responded to within the Response Time, regardless of whether any Availability Condition has been breached; and
- (c) if, in accordance with Schedule 15 – Output Specifications, no Rectification Time or Response Time applies, the Event shall be a Service Failure, Quality Failure or Energy Failure as determined by the designation of the applicable Performance Indicator in Schedule 15 – Output Specifications as Failure Type “SF”, “QF” or “EF” respectively.

1.21 **“Failure Points”** means points allocated to Project Co in respect of the occurrence of Availability Failures, Service Failures and Quality Failures which are determined by the provisions set out in Part G of and Appendix A to this Schedule 20. For the avoidance of doubt, there shall not be any Failure Points allocated to Project Co in respect of the occurrence of Energy Failures.

1.22 **“Failure Type”** means the designation of Performance Indicators in Schedule 15 – Output Specifications as “AF” (Availability Failure), “SF” (Service Failure), “QF” (Quality Failure) or “EF” (Energy Failure).

1.23 **“FM Help Desk”** means the contact point to be established by Project Co pursuant to Schedule 15 – Output Specifications in respect of the FM Help Desk Services for the notification of Events and other day to day matters arising in relation to the provision of Project Co Services.

1.24 **“First Bedding-In Period Threshold”** means \$[REDACTED].

1.25 **“Functional Area”** means an area of the Facility specified as such in Appendix B to this Schedule 20 comprising one or more Functional Units which operates on the basis of six four hour sessions per Contract Day.

1.26 **“Functional Part”** means a Functional Unit or a Functional Area according to the context in which it is used.

1.27 **“Functional Unit”** means a room or space within a Functional Area which is specified as such in Appendix C to this Schedule 20. For the avoidance of doubt, if a Functional Unit is omitted from Appendix C, the applicable weight for the purpose of calculating a Deduction shall be the same weight assigned to a similar Functional Unit.

1.28 **“Gainshare Adjustment”** means the adjustment calculated in accordance with Schedule 36 - Energy Matters.

1.29 **“Lifecycle Payment”** means the relevant amount calculated in accordance with the provisions set out in Section 3 of Part B, and does not include additional costs other than anticipated costs (and directly related contingencies and reserves) in respect of the replacement, refreshment and/or refurbishment of building systems, equipment and fixtures.

1.30 **“Major Energy Failure”** means an Energy Failure which has been designated with a failure category of “major” in the Output Specifications.

Thunder Bay Correctional Complex Project

1.31 “**Major Energy Failure Deduction**” means a Deduction which may be made in respect of a Major Energy Failure.

1.32 “**Major Quality Failure**” means a Quality Failure which has been designated with a failure category of “major” in the Output Specifications or in this Schedule 20.

1.33 “**Major Quality Failure Deduction**” means a Deduction which may be made in respect of a Major Quality Failure.

1.34 “**Major Service Failure**” means a Service Failure which has been designated with a failure category of “major” in the Output Specifications or in this Schedule 20.

1.35 “**Major Service Failure Deduction**” means a Deduction which may be made in respect of a Major Service Failure.

1.36 “**Medium Energy Failure**” means an Energy Failure which has been designated with a failure category of “medium” in the Output Specifications.

1.37 “**Medium Energy Failure Deduction**” means a Deduction which may be made in respect of a Medium Energy Failure.

1.38 “**Medium Quality Failure**” means a Quality Failure which has been designated with a failure category of “medium” in the Output Specifications or in this Schedule 20.

1.39 “**Medium Quality Failure Deduction**” means a Deduction which may be made in respect of a Medium Quality Failure.

1.40 “**Medium Service Failure**” means a Service Failure which has been designated with a failure category of “medium” in the Output Specifications or in this Schedule 20.

1.41 “**Medium Service Failure Deduction**” means a Deduction which may be made in respect of a Medium Service Failure.

1.42 “**Minimum Agreed Availability Conditions**” means all of the Accessibility Condition, the Safety Condition and the Use Condition, as temporarily modified as permitted in accordance with Section 11 of Part C of this Schedule 20 for the purposes of a Temporary Repair.

1.43 “**Minimum Unavailability Deduction**” means the sum of \$[REDACTED] which shall be index linked from the Base Date, using the Escalation Factor as referred to in Section 4.1 of Part B of this Schedule 20.

1.44 “**Minor Energy Failure**” means an Energy Failure which has been designated with a failure category of “minor” in the Output Specifications.

1.45 “**Minor Energy Failure Deduction**” means a Deduction which may be made in respect of a Minor Energy Failure.

Thunder Bay Correctional Complex Project

1.46 “**Minor Quality Failure**” means a Quality Failure which has been designated with a failure category of “minor” in the Output Specifications or in this Schedule 20.

1.47 “**Minor Quality Failure Deduction**” means a Deduction which may be made in respect of a Minor Quality Failure.

1.48 “**Minor Service Failure**” means a Service Failure which has been designated with a failure category of “minor” in the Output Specifications or in this Schedule 20.

1.49 “**Minor Service Failure Deduction**” means a Deduction which may be made in respect of a Minor Service Failure.

1.50 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by Contracting Authority to Project Co for the provision of the Project Co Services in accordance with the Project Agreement, as calculated in Section 1.1 of Part B of this Schedule 20.

1.51 “**Painshare Adjustment**” means the adjustment calculated in accordance with Schedule 36 – Energy Matters.

1.52 “**Payment Mechanism Technical Review**” has the meaning given in Section 1.1 of Part D of this Schedule 20.

1.53 “**Performance Indicators**” means the Performance Indicators as defined in Part IV of Schedule 15 – Output Specifications.

1.54 “**Performance Monitoring Period**” means the periods of time specified in Schedule 15 – Output Specifications in respect of a Project Co Service or a part of a Project Co Service being the periods by reference to which Project Co has an obligation to monitor its performance of a Project Co Service as set out under the column headed “Recording Frequency” of the Performance Indicators Legend.

1.55 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 11 of Part C of this Schedule 20.

1.56 “**Permanent Repair Deadline**” has the meaning given in Section 11.1(b) of Part C of this Schedule 20.

1.57 “**Quality Failure**” means any failure by Project Co to provide the Project Co Services in accordance with Performance Indicators designated Failure Type “QF” in Schedule 15 – Output Specifications.

1.58 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.

1.59 “**Rectification**” means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 15 – Output Specifications, making good the Event so that the subject matter of the Event complies with the levels of service required pursuant to the Project

Agreement. Without prejudice to the generality of the foregoing this shall include (a) restoring all functional capability; (b) ensuring that any Functional Part which has been affected by the relevant Event complies with the Availability Conditions; and (c) formally notifying the FM Help Desk that Rectification has been completed; and “**Rectify**” or “**Rectified**” shall be construed accordingly.

1.60 “**Rectification Time**” means in the case of an Event which, if not rectified, will result in Unavailability, a period equal to the relevant period prescribed in Table 1: Response and Rectification Times in Part IV to Schedule 15 – Output Specifications or, in the case of any other Event, the period specified in Schedule 15 – Output Specifications within which Rectification of the relevant Event must be completed, calculated in either case from the time that such Event is reported to the FM Help Desk. For the avoidance of doubt, if no period for rectification is specified in Schedule 15 – Output Specifications in respect of the relevant Event, no Rectification Time applies.

1.61 “**Remedial Period**” means, as applicable, the period allowed for remedying a Quality Failure in accordance with Section 7.3 of Part C of this Schedule 20 or an Energy Failure in accordance with Section 8.3.

1.62 “**Response**” means, following the notification of the occurrence of an Event and where response is applicable in accordance with Schedule 15 – Output Specifications, the following actions by Project Co:

- (a) establishing the nature, location and cause of the Event and attending the Site if necessary;
- (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
- (c) taking all necessary actions to make the Functional Part safe and secure, thereby as a minimum fulfilling all health and safety requirements;
- (d) when necessary, giving the Contracting Authority Representative an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on the related Functional Parts or Project Co Services; and
- (e) formally advising the FM Help Desk that the Response has been completed.

1.63 “**Response Time**” means the time required for Project Co to complete its Response measured from when an Event is reported to the FM Help Desk.

1.64 “**Return Date**” has the meaning given in Section 14.3(d) of Part C of this Schedule 20.

1.65 “**Safety Condition**” means a state or condition of the relevant Functional Part which allows those persons who it can reasonably be expected may from time to time require to enter, leave,

Thunder Bay Correctional Complex Project

occupy and use such Functional Part to do so safely, including compliance with Applicable Law (including, but not limited, to Authority Requirements) and relevant Contracting Authority requirements related to fire safety or health or workplace safety. For the avoidance of doubt, if a normal access route is unsafe, the Functional Part that cannot be entered, exited or occupied is considered Unavailable. For greater clarity, it also includes the systems that are necessary for, or support the safe provision of, the Project Co Services (e.g. fire alarm, ECMS, lighting, etc.).

1.66 “**Seasonal Bedding-In Period**” means a calendar month during the first 12 calendar months following the Payment Commencement Date which is not contemporaneous with the Bedding-In Period.

1.67 “**Second Bedding-In Period Threshold**” means \$[REDACTED].

1.68 “**Service Failure**” means any failure by Project Co to (a) respond to any Event within the Response Time as set out in Table 1: Response and Rectification Times in Part IV to Schedule 15 Output Specifications; or (b) provide the Project Co Services in accordance with Performance Indicators designated Failure Type “SF” in Schedule 15 – Output Specifications and which, where a Rectification Time applies, has not been rectified within the Rectification Time. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the non-compliance occurred (for example, non-performance of the scheduled activity by the scheduled time).

1.69 “**Service Failure Deduction**” means a Deduction which may be made in respect of a Service Failure.

1.70 “**Service Failure Performance Indicator**” means a Performance Indicator designated as “SF” (Service Failure) in Schedule 15 – Output Specifications.

1.71 “**Temporary Alternative Accommodation**” means accommodation offered to Contracting Authority by Project Co as a substitute for any Unavailable Functional Part pursuant to Section 14 of Part C of this Schedule 20.

1.72 “**Temporary Repair**” means, in respect of the occurrence of:

- (i) an Event which results in an Availability Condition not being met in a Functional Part; or
- (ii) a Service Failure,

works of a temporary nature that do not constitute Rectification but which satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Event or Service Failure, as the case may be, for the period until a Permanent Repair can be undertaken.

1.73 “**Unadjusted Monthly Service Payment**” means the Monthly Service Payment excluding Gainshare Adjustment or Painshare Adjustment arising pursuant to Schedule 36 – Energy Matters, and Deduction adjustment.

Thunder Bay Correctional Complex Project

1.74 “**Unavailable**” means, in relation to a Functional Part, that such Functional Part (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability Conditions and “**Unavailability**” shall be construed accordingly.

1.75 “**Unit Weighting Percentage**” means the percentage weighting ascribed to each Functional Unit for the purpose of calculating Deductions for Availability Failures as set out in Appendix C to this Schedule 20.

1.76 “**Use Condition**” means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part and allows the Functional Part to be able to be used for its intended use or purpose. For greater clarity, it also includes systems that are necessary for or support the provision of the Project Co Services, with the exception of those covered under the Safety Condition. For the purpose of applying the Use Condition, “able to be used for its intended use or purpose” shall be construed from the requirements set out in Schedule 15 - Output Specifications for the Functional Part, and, at a minimum, shall mean that all of the requirements relating to, but not limited to, architectural, structural, acoustics and vibration, security systems, mechanical and electrical systems, audio-visual, lighting systems and information, communications automation and technology for the Functional Part are satisfied, and that any other systems, equipment, and furniture and fittings that are pertinent to the intended use or purpose of the Functional Part are fully functional.

1.77 “**Use Parameters**” means the range of functional requirements for the proper use and enjoyment of a Functional Part as set out in Schedule 15 – Output Specifications.

**PART B:
CALCULATION OF SERVICE PAYMENTS**

1. MONTHLY SERVICE PAYMENT

1.1 The Monthly Service Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{MSP}_m = ((\text{ASP}_n/12) + \text{LCP}_n - \Sigma\text{D} + \text{GS} - \text{PS})$$

where

MSP_m is the Monthly Service Payment for the Contract Month m for which the formula is to be applied;

ASP_n is the Annual Service Payment for the relevant Contract Year n;

LCP_n is the Lifecycle Payment for the relevant Contract Month, calculated in accordance with the provisions set out in Section 3 of this Part B;

ΣD is the sum of Deductions in respect of the relevant Contract Month in relation to Availability Failures, Service Failures, Quality Failures and Energy Failures calculated in accordance with the provisions set out in Part C of this Schedule 20;

GS means any Gainshare Adjustment arising pursuant to Schedule 36 – Energy Matters; and

PS means any Painshare Adjustment arising pursuant to Schedule 36 – Energy Matters.

1.2 Contracting Authority shall pay to Project Co the Monthly Service Payment in accordance with the provisions of this Schedule 20 and Section 31 of the Project Agreement.

1.3 In the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month). Additionally, in the Contract Month in which the Payment Commencement Date falls, the number of days in the Contract Month shall be adjusted to include such number of calendar days after the Substantial Completion Date and before the Payment Commencement Date that Project Co has provided the Project Co Services.

1.4 In the event that Substantial Completion is achieved after the original Scheduled Substantial Completion Date, the first Monthly Service Payment payable by Contracting Authority to Project Co in respect of the Contract Month in which the Payment Commencement Date falls shall be calculated in accordance with Section 1.1 of this Part B using the Annual Service Payment for the Contract Year in which Substantial Completion is achieved. Any Lifecycle Payment

Thunder Bay Correctional Complex Project

payable as part of such first Monthly Service Payment shall be determined by reference to the Contract Month in which the Payment Commencement Date occurs.

For example, if:

- (a) the Substantial Completion Date is achieved 6 months after the Scheduled Substantial Completion Date; and
- (b) the Payment Commencement Date therefore occurs 6 months after Contract Month 1 (as set out in Column A of Table 2 of Appendix E),

then, the relevant Contract Month for the purposes of determining the amount of the Lifecycle Payment payable as part of such first Monthly Service Payment shall be Contract Month 7 (as set out in Column A of Table 2 of Appendix E) and the amount payable in relation thereto. For greater certainty, the Lifecycle Payments (if any) scheduled to be paid in Contract Months 1 to 6 (inclusive) shall not be payable by Contracting Authority.

2. ANNUAL SERVICE PAYMENT

2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$ASP_n = (ASP_o \times (1 - PESC)) + (ASP_o \times PESC \times ESC_n) + IA$$

Where:

ASP_n is the Annual Service Payment for the relevant Contract Year;

ASP_o is the un-escalated Annual Service Payment for the relevant Contract Year as set out in Appendix E to this Schedule 20, as adjusted by the Insurance Adjustment for the applicable Contract Year;

PESC is [REDACTED]%;

IA means any Insurance Adjustment calculated in accordance with Section 2.2 of this Part B; and

ESC_n is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.

2.2 In the event that Project Co is entitled to an Insurance Adjustment pursuant to Section 7.5 of Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement, then either (a) on the Payment Commencement Date, such Insurance Adjustment shall constitute an adjustment to the Annual Service Payment, or (b), on each Insurance Review Date following the Payment Commencement Date, the Insurance Adjustment shall be applied in accordance with Section 2.1 of this Part B.

3. LIFECYCLE PAYMENTS

3.1 The Lifecycle Payment applicable for any Contract Month *m* shall be calculated in accordance with the following formula:

$$LCP_n = (LCP_{\text{Month } n} * ESC_n)$$

Where:

LCP_n is the total, escalated Lifecycle Payment applicable for the relevant Contract Month;

$LCP_{\text{Month } n}$ is the Lifecycle Payment for the relevant Contract Month as set out in Column C of Table 2 in Appendix E;

ESC_n is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.

4. ESCALATION FACTOR

4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = CPI_n / CPI_o$$

Where:

ESC_n is the escalation factor applicable to the relevant Contract Year;

CPI_n is the value of CPI on April 1 of the relevant Contract Year “*n*”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date; and

CPI_o is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month of February most recently preceding the Base Date.

**PART C:
DEDUCTIONS FROM SERVICE PAYMENTS**

1. ENTITLEMENT TO MAKE DEDUCTIONS

1.1 If at any time during the Operational Term an Availability Failure, a Service Failure, a Quality Failure or an Energy Failure shall occur, Contracting Authority shall, subject to Sections 1 and 2 of this Part C, be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Availability Failure, Service Failure, Quality Failure or Energy Failure.

1.2 The maximum aggregate of all Deductions that Contracting Authority can make from a Monthly Service Payment in respect of any Contract Month shall be the Adjusted Service Payment relating to that Contract Month.

1.3 The classification of an Event as a potential Availability Failure, Service Failure, Quality Failure or Energy Failure shall be made at the time at which the occurrence of the Event is reported to the FM Help Desk. An Event which is incorrectly classified may be re-classified with the approval of the Contracting Authority Representative and the Project Co Representative, acting reasonably, in which case the applicable Performance Monitoring Report will be revised accordingly.

2. BEDDING-IN PERIOD, SEASONAL BEDDING-IN PERIOD AND MINOR DEFICIENCIES

2.1 During the Bedding-In Period, the following provisions shall apply to all Functional Areas and Functional Units of the Facility:

- (a) during the first 60 calendar days of the Bedding-In Period, Project Co shall be entitled to a [REDACTED]% reduction of the total amount of Deductions in respect of Availability Failures, Elevator Availability Failures, Service Failures and Quality Failures assessed for each Contract Month that is less than or equal to the First Bedding-In Period Threshold. Project Co shall not be entitled to a reduction of the amount of any such Deduction for such Contract Month that exceeds the First Bedding-In Period Threshold. During the last Contract Month of such 60 calendar day period, for the purposes of calculating such Deductions, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month in which the Bedding-In Period applies; and

For example, if the First Bedding-In Period Threshold is \$[REDACTED] and the total applicable Deductions assessed for the first Contract Month of the Bedding-In Period are \$[REDACTED], then \$[REDACTED] of this total Deduction amount shall be reduced by [REDACTED]% to \$[REDACTED], resulting in a final Deduction value for that Contracting Month equal to \$[REDACTED].

- (b) during the last 120 calendar days of the Bedding-In Period, Project Co shall be entitled to a [REDACTED]% reduction of the total amount of Deductions in

respect of Availability Failures, Elevator Availability Failures, Service Failures and Quality Failures assessed for each Contract Month that is less than or equal to the Second Bedding-In Period Threshold. Project Co shall not be entitled to a reduction of the amount of any such Deduction for such Contract Month that exceeds the Second Bedding-In Period Threshold. During the last Contract Month of such 120 calendar day period, for the purposes of calculating such Deductions, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month in which the Bedding-In Period applies.

For example, if the Second Bedding-In Period Threshold is \$[REDACTED] and the total applicable Deductions assessed for the first Contract Month of the Bedding-In Period are \$[REDACTED], then \$[REDACTED] of this total Deduction amount shall be reduced by [REDACTED]% to \$[REDACTED], resulting in a final Deduction value for that Contracting Month equal to \$[REDACTED].

2.2 From the date of the commencement of the Bedding-In Period until the date that is 90 calendar days following the expiry of the Bedding-In Period:

- (a) each of the Failure Points thresholds set out in the provisions of Sections 29.3, 29.4, 30.1(a)(ii), 42.1(a)(xi) to (xiii) and 42.5(a)(ii) of the Project Agreement, shall be deemed to increase and be an amount equal to the applicable threshold multiplied by 1.5; and
- (b) except as otherwise expressly set out in the Project Agreement to the contrary (including this Schedule 20), there shall be no relief from (i) Deductions relating to Energy Failures or (ii) Failure Points.

2.3 Project Co shall be entitled to two Seasonal Bedding-In Periods. Project Co shall, by written notice to the Contracting Authority Representative, identify each Seasonal Bedding-In Period at least 30 days prior to the first day of such Seasonal Bedding-In Period.

2.4 During the Seasonal Bedding-In Periods, the revised environmental parameters identified in Table 3 of Part IV of Schedule 15 – Output Specifications will be in effect.

2.5 Except as otherwise expressly set out in the Project Agreement to the contrary (including this Schedule 20), Project Co shall not be entitled to any relief from Failure Points or Deductions relating to Availability Failures, Service Failures, Quality Failures or Energy Failures during the Seasonal Bedding-In Periods.

2.6 Notwithstanding anything to the contrary in this Section 2, until the expiry of the Minor Deficiency Completion Period associated with any particular Minor Deficiency, Project Co shall be entitled to relief from any Failure Points and Deductions attributable to any Availability Failure, Elevator Availability Failure, Service Failure, Quality Failure or Energy Failure directly caused or contributed to by such Minor Deficiency, provided that Project Co shall only be entitled to such relief if and to the extent that the Availability Failure, Elevator Availability Failure, Service

Failure, Quality Failure or Energy Failure, as the case may be, was not otherwise caused or contributed to by any act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.

3. DEDUCTIONS FOR AVAILABILITY FAILURES

3.1 Subject to Sections 1 and 2 of this Part C, the amount to be deducted from the Monthly Service Payment in respect of any Availability Failure shall be the higher of:

- (a) the Minimum Unavailability Deduction; and
- (b) the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Availability Failure:

$$D = (\text{UMSPm}/(\text{Ny} \times 6)) \times \text{AW} \times \text{UW} \times \text{DP}$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

UMSPm means the Unadjusted Monthly Service Payment at the time the relevant Availability Failure occurs;

$$\text{UMSPm} = (\text{ASPn}/12) + \text{LCPn}$$

Ny means the number of days in the Contract Month m (being the month in which the relevant Availability Failure occurs);

AW means the Area Weighting Percentage attributable to the Functional Area in which the Availability Failure occurs;

UW means the Unit Weighting Percentage attributable to the Functional Unit(s) in which the Availability Failure occurs; and

DP is [REDACTED]% and shall apply only where the relevant Functional Part is Unavailable but Contracting Authority continues to use it (or any part thereof).

The Deductions for Availability Failures will be index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20, per Functional Unit affected.

3.2 For the avoidance of doubt, if more than one Functional Unit or Functional Area is rendered Unavailable by an Availability Failure, the amount of the Minimum Unavailability Deduction in respect of that Availability Failure remains the same. However, if the Availability Failure is not rectified within the applicable period as set out in Table 1: Response and Rectification Times in

Thunder Bay Correctional Complex Project

Part IV to Schedule 15 – Output Specifications, another Deduction (including the Minimum Unavailability Deduction) may be applied, since this is treated as a further Availability Failure.

3.3 In the event of an Elevator Availability Failure, Section 4 of this Part C explains the calculation of the corresponding Elevator Availability Failure Deduction.

4. DEDUCTIONS FOR ELEVATOR AVAILABILITY FAILURES

4.1 In the event of an Elevator Availability Failure, the level of Availability Failure Deduction shall be calculated as follows:

$$D = \sum_{L=i}^n (\text{UMSPm}/(\text{Ny} \times 6)) \times \text{AG}_L \times [\text{REDACTED}]\% \times \text{DP(EAF)}$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

L means the level of the Facility currently being calculated, and ranges between Levels 1 to 2 of the Facility;

UMSPm means the Unadjusted Monthly Service Payment at the time the relevant Availability Failure occurs;

Ny means the number of days in the Contract Month m (being the month in which the relevant Availability Failure occurs);

AG_L means the sumproduct of the Area Weighting Percentages attributable to the relevant Functional Areas and Unit Weighting Percentages attributable to the relevant Functional Units on the level of the Facility to which Contracting Authority's access has been impaired as a result of the Elevator Availability Failure as indicated in Appendix C to this Schedule 20 as applicable to the elevator(s) in question; and

DP(EAF) is the percentage set out in Table 1 of Appendix D to this Schedule 20 as determined by the number of Public Elevators and Service Elevators that are Unavailable at any one time.

5. [INTENTIONALLY DELETED]

6. AMOUNT OF DEDUCTIONS FOR SERVICE FAILURES

6.1 Subject to Sections 1 and 2 of this Part C, the amount of the Deduction in respect of a Service Failure shall be as follows:

- (a) in the case of a Minor Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this

Schedule 20. Where the Service Failure affects Functional Units, this Deduction amount will be applied per Functional Unit affected;

- (b) in the case of a Medium Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20. Where the Service Failure affects Functional Units, this Deduction amount will be applied per Functional Unit affected; and
- (c) in the case of a Major Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20. Where the Service Failure affects Functional Units, this Deduction amount will be applied per Functional Unit affected.

6.2 Where a Service Failure Performance Indicator has a Response Time or a Rectification Time, a Service Failure shall only occur if the Event in question has not been responded to within the applicable Response Time or rectified within the applicable Rectification Time.

6.3 Following the occurrence of a Service Failure where the applicable Service Failure Performance Indicator has a Response Time or a Rectification Time, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 6.1 of this Part C) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure.

6.4 The provisions of Section 6.3 of this Part C shall not apply to Service Failures in cases where, if the response or rectification is not carried out within the Response Time or the Rectification Time, as applicable, the Contracting Authority Representative notifies the Project Co Representative that Contracting Authority no longer requires the relevant Project Co Service.

6.5 Where a Service Failure Performance Indicator has no Response Time or Rectification Time, a Service Failure, shall occur upon the occurrence of the Event in question and a Service Failure Deduction shall apply in accordance with Section 6.1 of this Part C. If the Recording Frequency of the applicable Service Failure Performance Indicator is indicated in Part IV to Schedule 15 – Output Specifications with an “R”, Deductions for such Service Failure will be limited to no more than one occurrence per Contract Day.

7. AMOUNT OF DEDUCTIONS FOR QUALITY FAILURES

7.1 Subject to Sections 1 and 2 of this Part C, the amount of the Deduction in respect of a Quality Failure shall be as follows:

Thunder Bay Correctional Complex Project

- (a) in the case of a Minor Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20;
- (b) in the case of a Medium Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.

7.2 There are no Response Times or Rectification Times in respect of Quality Failures. The occurrence of a Quality Failure will result in a Quality Failure Deduction in respect of the Contract Month in which the Quality Failure occurred.

7.3 Following the occurrence of a Quality Failure, Project Co shall be allowed a Remedial Period of one Contract Month. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 7.1 of Part C) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure.

8. AMOUNT OF DEDUCTIONS FOR ENERGY FAILURES

8.1 Subject to Sections 1 and 2 of this Part C, the amount of a Deduction in respect of an Energy Failure shall be as follows:

- (a) in the case of a Minor Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20;
- (b) in the case of a Medium Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.

Thunder Bay Correctional Complex Project

8.2 The occurrence of an Energy Failure will result in a Deduction in respect of the Contract Month in which the Energy Failure occurred.

8.3 Any and all Remedial Periods in respect of Energy Failures are specified in Schedule 15 – Output Specifications. Following the occurrence of an Energy Failure, if a Remedial Period exists in respect of such Energy Failure, Project Co shall have until the expiry of such Remedial Period to demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Energy Failure, and in such an event, no further Deduction shall be made in respect of the Energy Failure. Otherwise, a further failure (as described in Schedule 15) and a corresponding Deduction shall be made of the appropriate amount (as described in Section 8.1 of this Part C) and a further Remedial Period or Remedial Periods shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Energy Failure.

9. RECTIFICATION

9.1 This Section applies where, in Schedule 15 – Output Specifications, a Rectification Time is specified in respect of an Event.

9.2 Subject to Sections 11 and 11.6 (in respect of Rectification only) of this Part C, no Availability Failure or Service Failure shall occur if Project Co successfully carries out the Rectification within the specified Rectification Time and in such circumstances no Deduction shall be made.

9.3 When carrying out a Rectification, or a Temporary Repair pursuant to Section 11 of this Part C, Project Co shall act in accordance with Applicable Law, Good Industry Practice, relevant Contracting Authority policies and Contracting Authority requirements related to fire safety or health or workplace safety. Failure to do so shall be deemed to be a new Minor Service Failure, unless the failure constitutes a breach of Applicable Law, in which case it shall be deemed to be a new Major Service Failure.

10. RE-COMMISSIONING

10.1 Where a Functional Unit needs to be re-commissioned by Contracting Authority following Rectification, the Contracting Authority Representative shall determine, prior to the commencement of any re-commissioning activities, whether the Rectification has been properly carried out. The Contracting Authority Representative may delegate this task to any other Contracting Authority employee in the relevant Functional Unit and, if re-commissioning activities commence, it shall be assumed that the necessary determination has been made. If it does not then prove possible to successfully complete the re-commissioning of the relevant Functional Unit, Project Co shall, notwithstanding, still be deemed to have carried out Rectification successfully.

10.2 Section 10.1 of this Part C shall not affect the right of Contracting Authority to issue, in accordance with the Output Specifications, an Ad-Hoc Service Request for the provision of Ad-

Hoc Services in connection with any re-commissioning activities carried out by Contracting Authority.

11. TEMPORARY REPAIRS

11.1 If Project Co informs Contracting Authority that it is unable to Rectify an Event within the specified Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facility but that a Temporary Repair can be effected:

- (a) Contracting Authority shall permit Project Co to carry out the Temporary Repair proposed by Project Co unless Contracting Authority, acting reasonably, considers that, if the Temporary Repair proposed by Project Co is carried out, the use of the relevant Functional Part will not be in accordance with Good Industry Practice;
- (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Repair (the “**Permanent Repair Deadline**”).

11.2 During any period beginning at the time when a Temporary Repair is permitted and ending at the earlier of:

- (a) the time at which a Permanent Repair is successfully completed; and
- (b) the Permanent Repair Deadline,

the Availability Conditions shall be replaced by the Minimum Agreed Availability Conditions for the purposes of assessing if the relevant Functional Part is Unavailable.

11.3 Subject to Section 9.3 of this Part C, if the Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Availability Failure or Service Failure will occur, and no Deduction may be made, in respect of the Event.

11.4 If the Temporary Repair is not effected within the specified Rectification Time, an Availability Failure or Service Failure, as the case may be, shall be deemed to occur.

11.5 If the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out before the expiry of such time period, the right for Project Co to carry out a Temporary Repair pursuant to this Section 11 shall cease and Section 11.6 of this Part C shall apply.

11.6 If the Permanent Repair is not effected by the Permanent Repair Deadline, an Availability Failure or Service Failure, as the case may be, shall be deemed to occur on the Permanent Repair Deadline and the provisions of Sections 3, 5 and 6 of this Part C shall apply.

12. REPEATED RECTIFICATION

12.1 Notwithstanding that Project Co completes a Rectification in respect of an Event within the relevant Rectification Time, there shall be deemed to be a Major Service Failure on the occurrence of:

- (a) the third such Event that arises during the Contract Day; and/or
- (b) the fourth such Event which occurs in any consecutive seven day period,

provided that:

- (c) each such Event is in connection with the same Service Standards set out in Schedule 15 – Output Specifications and occurs in the same Functional Area; and
- (d) whether the Events occur in the same Functional Unit or in different Functional Units within the same Functional Area there is reason to believe that the root cause of each Event is the same.

12.2 If the same such Event occurs more than three times in a Contract Day or more than four times in any consecutive seven day period, a Major Service Failure shall be deemed to have occurred in respect of each and every Event which has occurred during the Contract Day or during the consecutive seven day period (as the case may be).

13. EFFECT OF UNAVAILABILITY ON SERVICE FAILURE DEDUCTIONS

13.1 Subject to 13.2, when an Event occurs and an Availability Failure applies, no Service Failure or Quality Failure in respect of the same Event shall apply.

13.2 If an Event that results in an Availability Condition not being met in a Functional Unit or Functional Area is not responded to within the Response Time prescribed in Table 1: Response and Rectification Times in Part IV to Schedule 15 – Output Specifications, Deductions for Service Failures shall apply in addition to any Availability Failure that may impact the affected Functional Unit or Functional Area. .

13.3 For the avoidance of doubt, in the case of an Elevator Availability Failure, further Deductions in respect of unrelated Availability Failures that affect Functional Parts of the Facility shall continue to apply.

14. TEMPORARY ALTERNATIVE ACCOMMODATION

14.1 If an Availability Failure occurs Project Co may offer Contracting Authority Temporary Alternative Accommodation by written notice to Contracting Authority within 10 Business Days from the commencement of the relevant Event.

14.2 The Temporary Alternative Accommodation shall:

Thunder Bay Correctional Complex Project

- (a) comply with:
 - (i) the Accessibility Condition;
 - (ii) the Safety Condition; and
 - (iii) the Use Condition;
- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which Contracting Authority occupied the affected Functional Part;
- (d) unless Contracting Authority otherwise agrees, be accommodation for which Contracting Authority is not already paying within the Monthly Service Payment or other terms of the Project Agreement;
- (e) be supplied with the Project Co Services to the standards set out in Part IV of Schedule 15 – Output Specifications which Project Co would under normal circumstances be providing within the Unavailable Functional Part;
- (f) not involve Contracting Authority incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the Facility for which it is a temporary replacement, shall be reasonably accessible by public and private transport and shall have adequate parking facilities.

14.3 The written notice sent by Project Co to Contracting Authority pursuant to Section 14.1 of this Part C shall:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite Contracting Authority to inspect the Temporary Alternative Accommodation and shall give Contracting Authority reasonable notice of a time and a date when it may do so;
- (c) set out its proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (agreed by Contracting Authority before the submission of the written notice) by which Project Co reasonably expects Contracting Authority to be able to relocate back to the relevant Functional Part (the “**Return Date**”); and

Thunder Bay Correctional Complex Project

- (e) describe the terms upon which Contracting Authority shall be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and Functional Areas and the weighting to be attributed to them for the purposes of the operation of the Payment Mechanism.

14.4 If it requires an inspection of the Temporary Alternative Accommodation, Contracting Authority shall do so within five Business Days of receipt of the notice referred to in Section 14.1 above. Contracting Authority shall notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection of the same or, if Contracting Authority has elected not to carry out an inspection, within 5 Business Days of receipt of the notice referred to in Section 14.1 of this Part C. Contracting Authority shall act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

14.5 Contracting Authority accepts the offer of Temporary Alternative Accommodation then, without affecting Contracting Authority's remedial rights under Section 30 of the Project Agreement, Contracting Authority shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which Contracting Authority is entitled and able to return to and use the Functional Part in accordance with the agreed program for relocation and re-commissioning referred to in Section 14.9 of this Part C.

14.6 For the avoidance of doubt, Contracting Authority's rights under Section 30 of the Project Agreement shall not be affected by the acceptance by Contracting Authority of the Temporary Alternative Accommodation.

14.7 If Contracting Authority accepts Project Co's offer of Temporary Alternative Accommodation, no further Deductions shall be made or Failure Points awarded in respect of a Functional Part vacated by Contracting Authority while the Temporary Alternative Accommodation replacing that Functional Part is being used by Contracting Authority.

14.8 Contracting Authority shall be entitled to award Failure Points and make Deductions in respect of any Availability Failure or Service Failure which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Part which it replaced and any Deduction in respect of an Availability Failure shall be calculated using the weightings Applicable to the Functional Part which the Temporary Alternative Accommodation has replaced.

14.9 When Project Co has completed the required works to enable Contracting Authority to return to the Functional Part, the Contracting Authority Representative shall confirm that the Availability Conditions for the Functional Part are met and the Contracting Authority Representative and Project Co shall agree a relocation program to return to the Functional Part and any necessary period for re-commissioning.

14.10 Where Contracting Authority has accepted the proposed Temporary Alternative Accommodation pursuant to Section 14.4 of this Part C, in the event that Project Co fails to

Thunder Bay Correctional Complex Project

complete the works to enable Contracting Authority to return to the relevant Functional Part on the Return Date Contracting Authority may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation. In such circumstances:

- (a) where Contracting Authority, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date the Temporary Alternative Accommodation shall be deemed to be Unavailable with Effect from the Return Date and Contracting Authority shall levy [REDACTED]% of the Deduction which would have been levied in respect of that Availability Failure for each Contract Day on which Contracting Authority occupies the Temporary Alternative Accommodation thereafter until the date on which the Availability Failure referred to in Section 14.1 of this Part C has been rectified and Contracting Authority is able to resume its use of the Functional Part; and
- (b) where Contracting Authority, in its discretion, vacates the Temporary Alternative Accommodation following the Return Date, the Temporary Alternative Accommodation shall be deemed to be Unavailable on each Contract Day on which Contracting Authority is not in occupation of the Temporary Alternative Accommodation until the date on which the Availability Failure referred to in Section 14.1 of this Part C has been rectified and Contracting Authority is able to resume its use of the Functional Part.

14.11 Contracting Authority shall specify a date, being a date no earlier than the Return Date, by which the Rectification shall be completed and if Project Co fails to complete the Rectification of the Functional Part for which the Temporary Alternative Accommodation is a replacement by such date the following shall apply:

- (a) Contracting Authority may (without prejudice to its rights under Section 42 of the Project Agreement or any other express rights of Contracting Authority under the Project Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore any Functional Part for which the Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Output Specifications; and
- (b) Project Co shall reimburse Contracting Authority for all reasonable costs, losses, expenses or damages incurred by Contracting Authority in relation to taking the steps, or engaging others to take the steps, referred to in Section 14.11(a) of this Part C and Contracting Authority shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of the Project Agreement.

**PART D:
REVIEW OF DEDUCTIONS**

1. ANNUAL REVIEW

1.1 The identification of Functional Areas, Functional Units, Rectification Times, Area Weighting Percentages, Unit Weighting Percentages and the amount of Deductions for each category of Availability Failure, Service Failure, Quality Failure and Energy Failure shall be reviewed by Contracting Authority and Project Co (each is a “**Payment Mechanism Technical Review**”)

- (a) by no later than the date that is 180 days prior to the Scheduled Substantial Completion Date; and
- (b) following the Substantial Completion Date, at any time if requested by either Party but in any event at least once in every Contract Year by no later than a date agreed by Contracting Authority and Project Co, each acting reasonably.

1.2 Project Co shall, at its sole cost and expense and to the satisfaction of Contracting Authority, deliver all documentation, information and analyses desired and required by either or both of the Parties to carry out a Payment Mechanism Technical Review by no later than the date that is, as applicable, 20 Business Days prior to the date described in Section 1.1(a) of this Part D, or the date determined by Contracting Authority pursuant to Section 1.1(b) of this Part D.

1.3 Contracting Authority and Project Co shall act reasonably and diligently in carrying out each Payment Mechanism Technical Review.

1.4 For the avoidance of doubt, the Parties intend that any changes made as a result of a Payment Mechanism Technical Review shall not alter the overall risk profile of the relevant Project Co Service or the likely magnitude of Deductions. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 – Variation Procedure shall apply.

1.5 Unless otherwise agreed between the Parties, Contracting Authority and Project Co may in respect of each matter that is the subject of a Payment Mechanism Technical Review either:

- (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the Payment Mechanism Technical Review; or
- (b) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the Payment Mechanism Technical Review.

1.6 Unless otherwise agreed between the Parties, any agreed adjustment pursuant to a Payment Mechanism Technical Review shall be effective from the commencement of the Contract Year immediately following the relevant Payment Mechanism Technical Review.

**PART E:
FAILURE BY PROJECT CO TO MONITOR OR REPORT**

1. FAILURE BY PROJECT CO TO MONITOR OR REPORT

1.1 Subject to Section 1.2 of this Part E, in the event that at any time an error or omission in a Performance Monitoring Report is discovered which reveals one or more failures of Project Co to monitor or accurately report one or more Events, Availability Failures, Service Failures, Quality Failures, Energy Failures or Ad-Hoc Service Requests:

- (a) each such failure shall be deemed to be a new Minor Quality Failure, save and except if such failure was the result of any of the circumstances described in Section 1.3 of this Part E, in which case it shall be deemed to be a new Major Quality Failure; and
- (b) Contracting Authority shall be entitled to make Deductions in respect of each such Availability Failure, Service Failure, Quality Failure or Energy Failure in the manner set out in Part C of this Schedule 20. Such Deductions shall be made from the Monthly Service Payment payable in respect of the Contract Month in which the relevant matters were discovered or, to the extent that Contracting Authority is unable to make such Deductions from the Monthly Service Payment in respect of that Contract Month, such Deductions may be carried forward and deducted from Monthly Service Payment(s) due in respect of future Contract Months.

1.2 Section 1.1 of this Part E shall be applicable in respect of a Performance Monitoring Report for a period of one year following the submission of such Performance Monitoring Report (or such longer period of time agreed to by the Parties), save and except if the applicable failure to monitor or accurately report described in Section 1.1 of this Part E arose as a result of any of the circumstances set out in Section 1.3 of this Part E.

1.3 For the purposes of Section 1.1(a) and Section 1.2 of this Part E, the relevant circumstances are:

- (a) fraudulent action or inaction;
- (b) misrepresentation; or
- (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.

1.4 The provisions of this Part E shall be without prejudice to any rights of Contracting Authority pursuant to Sections 29, 42 and 57 of the Project Agreement.

**PART F:
INTENTIONALLY DELETED**

**PART G:
FAILURE POINTS**

1. FAILURE POINTS

1.1 Failure Points shall be awarded for every Availability Failure, Service Failure and Quality Failure which occurs during the Operational Term, unless such Failure Points are cancelled pursuant to any other provision of the Project Agreement.

1.2 For the avoidance of doubt when awarding Failure Points, where a further Availability Failure, Service Failure or Quality Failure is deemed to have occurred in accordance with Sections 3, 5, 6 or 7 of Part C of this Schedule 20, the appropriate number of Failure Points shall be awarded in respect of each such Availability Failure, Service Failure or Quality Failure even though they arise from the same circumstances.

1.3 If the same Availability Failure or Service Failure affects more than one Functional Unit, the number of Failure Points to be awarded in respect of that Availability Failure shall be determined by the number of Functional Units affected. For example, an Availability Failure affecting one Functional Unit will attract [REDACTED] Failure Points whereas an Availability Failure affecting five Functional Units will attract [REDACTED] Failure Points.

1.4 The number of Failure Points attributable to Availability Failures, Service Failures and Quality Failures is set out in Appendix A – Table 1 to this Schedule 20. For greater certainty, if the Availability Failure is caused by an Elevator Availability Failure, the number of Failure Points shall be allocated based on Table 2 of Appendix A to this Schedule 20.

1.5 The maximum number of Failure Points that can be allocated to a single Availability Failure is [REDACTED] for any three-month rolling period.

1.6 For the avoidance of doubt, if the maximum number of Failure Points has been allocated due to an Availability Failure then no further Failure Points shall be allocated due to the continuation of that Availability Failure during the period specified in Section 1.5 above (as a “further Availability Failure” pursuant to Section 3.2 of Part C of this Schedule 20).

**PART H:
INTENTIONALLY DELETED**

**APPENDIX A
FAILURE POINTS**

[REDACTED]

**APPENDIX B
INTENTIONALLY DELETED**

**APPENDIX C
AREA WEIGHTS AND FUNCTIONAL UNIT WEIGHTS**

[REDACTED]

**APPENDIX D
DEDUCTION PERCENTAGES USED IN THE CALCULATION
OF ELEVATOR AVAILABILITY FAILURES**

[REDACTED]

**APPENDIX E
ANNUAL SERVICE PAYMENT SCHEDULE**

[REDACTED]

SCHEDULE 21

[INTENTIONALLY DELETED]

**SCHEDULE 22
VARIATION PROCEDURE**

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Contracting Authority Work**” has the meaning given in Section 1.7(a).
 - (ii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
 - (iii) “**Estimate**” has the meaning given in Section 1.4(a).
 - (iv) “**Overhead**” has the meaning given in Appendix C of this Schedule 22.
 - (v) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 22.
 - (vi) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
 - (vii) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
 - (viii) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii).
 - (ix) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (x) “**Variation Enquiry**” has the meaning given in Section 1.3(a).

1.2 General

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation.
- (b) Contracting Authority shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any Variation shall be the sum of the following amounts:

Thunder Bay Correctional Complex Project

- (i) the Direct Cost of such Variation; plus
 - (ii) Overhead and Profit, other than in the case of Pandemic and Epidemic Change in Law Compensation for which only Overhead shall be included.
- (d) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.
- (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any Variation or Variations generally, including with respect to the administration and pricing of Variations.

1.3 Variation Enquiry

- (a) If Contracting Authority proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written Notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
- (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Contracting Authority intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by Contracting Authority, acting reasonably.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:

Thunder Bay Correctional Complex Project

- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Project Operations, and any such Permit, Licence, Approval and Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) Contracting Authority does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
 - (ix) in the case of a Variation relating to the Project Co Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Contracting Authority a written Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

Thunder Bay Correctional Complex Project

- (a) Unless Contracting Authority in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
 - (ii) any impact on the Construction Period Payments, or the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Facility, the completion of the Works and the performance of the Project Co Services (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Project Operations and any other impact on the Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any impact on the expected usage and cost of Utilities at the Facility for the current Contract Year and subsequent Contract Years (including under Schedule 36 – Energy Matters), and any amendments to the Mandatory Energy Targets, the Discrete Annual Energy Targets and the Annual Energy Target required as a consequence of the Variation pursuant to and in accordance with Schedule 36 – Energy Matters. In the event that any such amendments are required, Project Co shall submit an updated Target Energy Model to Contracting Authority in accordance with Schedule 36 – Energy Matters with its Estimate;
 - (v) any amendments to the Project Agreement (including Schedule 20 – Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Contracting Authority to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
 - (vi) any impact on the Direct Cost to Project Co and each Subcontractor of the proposed Variation, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Contracting Authority); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (vii) either:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or

- (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
 - (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
 - (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments (expressed in both real dollar amounts and Base Date dollar amounts using the Escalation Factor as the discount rate), with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
 - (x) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
 - (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of the Project Agreement,
- in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably, that:
 - (i) subject to Sections 1.6(c) and 1.6(e), Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders, to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out in this Schedule 22, all costs of Project Co and each Subcontractor are limited to the Direct Cost of the proposed Variation described in Appendix A of this Schedule 22;
 - (iii) Overhead has been calculated in accordance with Appendix C of this Schedule 22 in respect of Pandemic and Epidemic Change in Law Compensation and, in respect of all other Variations, Overhead and Profit has been calculated in accordance with Appendix B of this Schedule 22;
 - (iv) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour and material rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and

- (C) any and all changes in risk allocation;
 - (v) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable amounts for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vi) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage and cost of Utilities, and the Direct Cost of the proposed Variation to be incurred.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Variation.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Contracting Authority receives an Estimate, Project Co and Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed Variation, Project Co shall seek and evaluate competitive tenders for the proposed Variation, including in accordance with such Applicable Law or policy.
- (f) Contracting Authority may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Contracting Authority in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

1.7 Contracting Authority's Right to Perform

- (a) In respect of the Facility, after Substantial Completion, Contracting Authority shall have the right to perform the subject matter of a proposed Variation ("**Contracting Authority Work**") itself, or through others contracting directly with Contracting Authority, without compensation to Project Co, except as specifically stated herein.

Thunder Bay Correctional Complex Project

- (b) Contracting Authority shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by Contracting Authority, or any third party, of Contracting Authority Work, including any loss or expense related to any adverse impacts on the Project Operations.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall either:
 - (i) subject to Section 1.2(b) and Section 1.8(f), withdraw the Variation Enquiry by written Notice to Project Co; or
 - (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**Variation Confirmation**”), including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) Within five Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.8(a)(ii), Project Co shall execute and deliver a copy of such executed Variation Confirmation to Contracting Authority.
- (c) If Contracting Authority does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.2(b) and Section 1.8(f), the Variation Enquiry shall be deemed to have been withdrawn.
- (d) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend the Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(d)(i), all provisions of the Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(d)(i).
- (e) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:

Thunder Bay Correctional Complex Project

- (i) Project Co obtains such financing acceptable to Contracting Authority in its sole discretion; or
 - (ii) Contracting Authority in its sole discretion waives such requirement.
- (f) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at Contracting Authority's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Contracting Authority may at any time withdraw a Variation Enquiry and, subject to Section 1.8(g), Contracting Authority shall not be obligated to Project Co in respect of a Variation until such time as Contracting Authority in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by Contracting Authority or Contracting Authority has waived such requirement,

provided that Contracting Authority may not withdraw a Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (g) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Contracting Authority shall reimburse Project Co for the Direct Cost reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co and Contracting Authority, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek debt financing from any source other than the existing Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Contracting Authority within 60 days of the date that Contracting Authority issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Contracting Authority with details of such financing, and Contracting Authority

shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Contracting Authority determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.

- (d) Contracting Authority may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (e) If Contracting Authority waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d) then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Contracting Authority shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Contracting Authority, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
 - (i) the Monthly Service Payments (expressed only in Base Date dollar amounts using the Escalation Factor as the discount rate) shall be adjusted as set out in the Variation Confirmation; and
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
 - (A) Contracting Authority shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Contracting Authority; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Contracting Authority

Thunder Bay Correctional Complex Project

(such approval not to be unreasonably withheld or delayed), the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.

- (b) Contracting Authority shall make payment to Project Co within 20 Business Days of receipt by Contracting Authority of invoices presented to Contracting Authority in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by Contracting Authority in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority in connection with a proposed Variation.

1.11 Reduction in Project Operations

- (a) If a Variation involves any reduction in the Project Operations which results in savings in the Direct Cost to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under the Project Agreement in an amount equal to such reduction in the Direct Cost, and Project Co shall compensate Contracting Authority by way of a reduction in the Monthly Service Payments (expressed in Base Date dollar amounts using the Escalation Factor as the discount rate).

Thunder Bay Correctional Complex Project

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto or if Contracting Authority, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Contracting Authority may issue a Variation Directive and, following receipt of the Variation Directive, Project Co shall promptly proceed to implement the Variation.
- (b) Without limiting Project Co’s obligation to promptly implement such Variation:
 - (i) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation;
 - (ii) pending final determination of the valuation, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion) or the Contracting Authority Representative (if such Variation is in respect of matters on or following Final Completion), as applicable, and, in each case, acting reasonably, shall initially determine the valuation of such Variation in accordance with Appendix A and Appendix B of this Schedule 22, with any Dispute to be determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to Contracting Authority a written Notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Contracting Authority, and whether an adjustment to the Monthly Service Payments is required; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Contracting Authority, in its sole discretion, elects to consider the Variation proposed by Project Co, Contracting Authority may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

Thunder Bay Correctional Complex Project

- (c) Project Co shall, promptly upon demand, reimburse Contracting Authority for all out-of-pocket costs and expenses reasonably incurred by Contracting Authority in connection with Contracting Authority's consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 22, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

3. SMALL WORKS

3.1 General

- (a) After the Substantial Completion Date, with respect to the Facility, Project Co shall carry out all Small Works requested by Contracting Authority.
- (b) If Small Works are requested by Contracting Authority, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide Contracting Authority with a price for carrying out the Small Works.
- (c) Project Co's price for Small Works shall include only (i) the Direct Cost of such Small Works and (ii) Overhead and Profit with respect to such Direct Cost calculated in accordance with this Schedule 22, including Appendix B of this Schedule 22.
- (d) If Project Co's price is accepted by Contracting Authority, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (e) Contracting Authority may at any time, in its sole discretion, including if Contracting Authority does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.

3.2 Project Co to Minimize Inconvenience

- (a) Project Co shall notify Contracting Authority of the estimated duration of any Small Works so that Contracting Authority and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to Contracting Authority. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COST

1. DIRECT COST

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations on the Site;
- (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on the Site in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vi) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (vii) deposits lost;
- (viii) except as otherwise set out in this Project Agreement, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor, other than the Construction Contractor, the Service Provider and any entity not at arms-length from Project Co, any Equity Provider, the Construction Contractor or the Service Provider;
- (ix) the reasonable fees and disbursements of the Lenders’ Consultant and the external technical consultants and external legal advisors of Project Co and its Subcontractors;

Thunder Bay Correctional Complex Project

- (x) the cost of third party quality assurance required by Contracting Authority, such as independent inspection and testing services;
- (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Contracting Authority to pay HST payable by it under the Project Agreement), but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement;
- (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xv) the cost of debt financing provided by the Lenders including all additional financing costs related to any delay caused by the implementation of the Variation;
- (xvi) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority;
- (xvii) the cost of any additional insurance or performance security required or approved by Contracting Authority; and
- (xviii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;

Thunder Bay Correctional Complex Project

- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the Direct Cost with respect to the per hour cost charged by Project Co or any Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Greater Toronto Area;
- (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the Greater Toronto Area;
- (vi) the Direct Cost shall not include:
 - (A) any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Project Operations (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);
 - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
 - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the Variation and any other overhead cost or expense;
 - (D) the cost of travel and subsistence expenses; or
 - (E) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 1.2(e) of this Schedule 22;
- (vii) for greater certainty, the Direct Cost shall include the aggregate real dollar amount value of all of the costs permitted by this Appendix A related to any variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the Project Co Services associated with the Variation, provided that, in accordance with Section 1.10(a)(i), any adjustment to the Monthly Service Payments pursuant to this Schedule 22 shall only be expressed in Base Date dollar amounts using the Escalation Factor as the discount rate; and

Thunder Bay Correctional Complex Project

- (viii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Contracting Authority. Proper documentation shall include unit rates or prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Contracting Authority in writing.

APPENDIX B

CALCULATION OF OVERHEAD AND PROFIT

- (a) **“Overhead and Profit”** means, for each of rows 1, 2, 3, 4 and 5 in Table A – Applicable Overhead and Profit, the product of:
 - (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject Variation (e.g. initial construction costs or annual Project Co Services costs).
- (c) Project Co, the Construction Contractor and the Service Provider shall charge no more than the amount of Overhead and Profit calculated in accordance with Appendix B of this Schedule 22.
- (d) No amount for Overhead and Profit shall be charged on any other amount of Overhead and Profit.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 22 is intended to compensate Project Co, the Construction Contractor and the Service Provider for all costs and expenses incurred in connection with a Variation other than the Direct Cost, including, without limitation, all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22.

TABLE A
APPLICABLE OVERHEAD AND PROFIT

[REDACTED]

APPENDIX C

**CALCULATION OF OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC
CHANGE IN LAW COMPENSATION**

- (a) **“Overhead”** means, for each of rows 1, 2, 3, 4 and 5 in Table B – Applicable Overhead for Purposes of Pandemic and Epidemic Change in Law Compensation, the product of:
 - (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by,
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead shall not be determined based on any component or components of the subject Variation.
- (c) Project Co, the Construction Contractor and the Service Provider shall charge no more than the amount of Overhead calculated in accordance with Appendix C of this Schedule 22.
- (d) No amount for Overhead shall be charged on any other amount of Overhead.
- (e) No other methodology for the calculation of Overhead shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead payable in accordance with this Schedule 22 is intended to compensate Project Co, the Construction Contractor and the Service Provider for all costs and expenses incurred in connection with a Variation as the result of a Pandemic and Epidemic Change in Law other than the Direct Cost, including, without limitation, all overhead, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22, and excluding profit.

TABLE B

**APPLICABLE OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC CHANGE IN
LAW COMPENSATION**

[REDACTED]

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) “**Adjusted Estimated Fair Value**” means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by Contracting Authority pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;
 - (A) the Post Termination Service Amounts actually paid by Contracting Authority to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that Contracting Authority is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) Contracting Authority has received such amounts in accordance with this Project Agreement.

Thunder Bay Correctional Complex Project

- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by Contracting Authority pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Service Amounts actually paid by Contracting Authority to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that Contracting Authority is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain) or any proceeds from the Performance Plus Bond received by Contracting Authority, in each case to the extent not included in Section 1.1(b)(iii)(A),

to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
 - (D) Contracting Authority has received such amounts in accordance with this Project Agreement.
- (c) **“Breach of Refinancing Termination Sum”** has the meaning given to it in Section 6.1(b) of this Schedule 23.
- (d) **“Compensation Date”** means either:
- (i) if Section 3.3 of this Schedule 23 applies, the earlier of:
 - (A) the date that the New Agreement is entered into; and

Thunder Bay Correctional Complex Project

- (B) the date on which Contracting Authority pays the Adjusted Highest Qualifying Tender Price to Project Co; or
- (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (e) “**Contracting Authority Default Termination Sum**” has the meaning given in Section 2.1(b) of this Schedule 23.
- (f) “**Discount Rate**” has the meaning set out in the Project Agreement.
- (g) “**Employee Termination Payments**” means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
 - (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (h) “**Estimated Fair Value**” means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (i) “**Invoice Date**” means the date that is the later of:
 - (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (j) “**Junior Debt Amount**” has the meaning set out in the Project Agreement.
- (k) “**Junior Debt Makewhole**” has the meaning set out in the Project Agreement.
- (l) “**Junior Lenders**” has the meaning set out in the Project Agreement.

Thunder Bay Correctional Complex Project

- (m) “**Lenders**” has the meaning set out in the Project Agreement.
- (n) “**Lending Agreements**” has the meaning set out in the Project Agreement.
- (o) “**Liquid Market**” means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services to correctional facilities under a public-private partnership or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.
- (p) “**Market Value Availability Deduction Amount**” means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Functional Parts which were unavailable at the Termination Date but which have subsequently become available, whether as a result of Contracting Authority incurring Rectification Costs or otherwise.
- (q) “**Maximum Service Payment**” means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (r) “**New Agreement**” means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
 - (i) if this Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
 - (ii) any accrued Failure Points shall be cancelled;
 - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (iv) any other amendments which do not adversely affect Project Co.
- (s) “**New Project Co**” means the person who has entered or who will enter into the New Agreement with Contracting Authority.
- (t) “**Non-Default Termination Sum**” has the meaning given in Section 4.1(b) of this Schedule 23.
- (u) “**Payment Period**” has the meaning set out in the Project Agreement.

Thunder Bay Correctional Complex Project

- (v) **“Performance Plus Bond”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- (w) **“Post Termination Service Amount”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Project Agreement had this Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
 - (i) the Market Value Availability Deduction Amount for that Payment Period; and
 - (ii) the Rectification Costs incurred by Contracting Authority in that Payment Period.
- (x) **“Qualification Criteria”** means the criteria that Contracting Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
 - (i) that the tenders confirm acceptance of the New Agreement terms;
 - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
 - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
 - (iv) that the tenderer is experienced in providing the Project Co Services or similar services;
 - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
 - (vi) any other tender criteria established by Contracting Authority, acting reasonably.
- (y) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
- (z) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.
- (aa) **“Rectification Costs”** means an amount equal to the reasonable and proper costs incurred by Contracting Authority in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
- (bb) **“Senior Debt Amount”** has the meaning set out in the Project Agreement.
- (cc) **“Senior Debt Makewhole”** has the meaning set out in the Project Agreement.
- (dd) **“Senior Lenders”** has the meaning set out in the Project Agreement.

Thunder Bay Correctional Complex Project

- (ee) “**Subcontractor Losses**” means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any commercially reasonable breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
 - (ii) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Service Contract as a direct result of the termination of this Project Agreement (including any commercially reasonable breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,
- provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any commercially reasonable breakage fee set out in any of the Ancillary Documents);
 - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
 - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (ff) “**Tender Costs**” means the reasonable and proper costs of Contracting Authority incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (gg) “**Tender Process**” means the process by which Contracting Authority requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.
- (hh) “**Tender Process Monitor**” has the meaning given in Section 3.3(g) of this Schedule 23.

2. COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 43 of this Project Agreement or Contracting Authority terminates this Project Agreement pursuant to Section 44.3 of this Project Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default Termination Sum.
- (b) The “**Contracting Authority Default Termination Sum**” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and Subcontractor Losses;
 - (v) Construction Period Payments payable by Contracting Authority in accordance with Schedule 19 – Construction Period Payments on or prior to the Termination Date;
 - (vi) any reasonable costs properly incurred by Project Co to wind up its operations; and
 - (vii) an amount which, if paid on the Termination Date and taken together with all Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Equity IRR on the amount paid for the Equity Capital;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (viii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Project

Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;

- (ix) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (x) amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Contracting Authority Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(ii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default Termination Sum in accordance with Section 8 of this Schedule 23.

3. COMPENSATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) Save and except where Section 6 applies, if Contracting Authority terminates this Project Agreement pursuant to Section 42 of this Project Agreement Contracting Authority shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

3.2 Retendering Election

- (a) Contracting Authority shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
- (i) Contracting Authority notifies Project Co on or before the date falling 30 days after the Termination Date; and
 - (ii) there is a Liquid Market,

but, otherwise, Contracting Authority shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.

- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to provide the Project Co Services and Contracting Authority shall pay Project Co in accordance with Section 3.3(e).

3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) Contracting Authority shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) Contracting Authority shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.

Thunder Bay Correctional Complex Project

- (d) Project Co authorizes the release of any information by Contracting Authority under the Tender Process which would otherwise be prevented under Section 49 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to provide the Project Co Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, Contracting Authority shall pay to Project Co:
 - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
 - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “**Tender Process Monitor**”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on Contracting Authority’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with Contracting Authority in a form acceptable to Contracting Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to Contracting Authority as to compliance with the Tender Process. Contracting Authority shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that Contracting Authority has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, Contracting Authority shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) Contracting Authority shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) Contracting Authority may elect, by notice to Project Co at any time prior to Contracting Authority ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no

Thunder Bay Correctional Complex Project

retendering procedure set out in Section 3.4 of this Schedule 23. In addition, Contracting Authority shall follow such no retendering procedure if:

- (i) only one Qualifying Tender is received; or
 - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to Contracting Authority at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If Contracting Authority is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If Contracting Authority provides a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by Contracting Authority within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 – Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b), if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If Contracting Authority elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3, then Contracting Authority shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
 - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in this Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
 - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of (i) the Substantial Completion Payment, (ii) the Monthly Service Payments forecast to be made from the Termination Date to the Expiry

Date, and (iii) the Construction Period Payments, assuming that no Deductions will be made over that period, discounted in each case at the Discount Rate

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or providing the Project Co Services reasonably forecast to be incurred by Contracting Authority from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by Contracting Authority for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

- (A) any insurance proceeds or proceeds from the Performance Plus Bond received or which will be received pursuant to policies or the Performance Plus Bond, as applicable, maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements; and
- (B) amounts payable by Contracting Authority in respect of Capital Expenditures under this Project Agreement which have not been paid,

discounted at the Discount Rate.

- (iii) The amount of $(A - B - C)$ as defined in Section 3.4(c)(ii) shall be no greater than the Non-Default Termination Sum.
 - (iv) As applicable, all costs referred to in Section 3.4(c)(ii) are to be forecast at a level that will deliver the Project Co Services and other Project Operations to the standards required by this Project Agreement and to achieve the full Monthly Service Payments (without Deductions).
 - (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

Thunder Bay Correctional Complex Project

- (e) Contracting Authority shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY CONTRACTING AUTHORITY FOR RELIEF EVENT

4.1 Consequences

- (a) If Contracting Authority terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 44.2 of this Project Agreement, Contracting Authority shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit);
 - (v) Construction Period Payments payable by Contracting Authority in accordance with Schedule 19 – Construction Period Payments on or prior to the Termination Date; and
 - (vi) an amount equal to the sum of the Equity Capital, less all Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any

claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims; and

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

5. INTENTIONALLY DELETED

6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

6.1 Consequences

- (a) If Contracting Authority terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 – Refinancing or as a result of the Lenders assigning, transferring or otherwise disposing

Thunder Bay Correctional Complex Project

of any right, title or interest they may have in, or obligations they may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, Contracting Authority shall pay to Project Co the Breach of Refinancing Termination Sum.

- (b) The “**Breach of Refinancing Termination Sum**” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iv) Construction Period Payments payable by Contracting Authority in accordance with Schedule 19 – Construction Period Payments on or prior to the Termination Date; and
 - (v) the following amounts calculated in respect of the Construction Contractor and the Service Provider, which Project Co can demonstrate will be paid directly to such persons:
 - (A) the Employee Termination Payments; and
 - (B) as applicable, the Construction Contractor's and Service Provider's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties

wholly unrelated to the Project Operations, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;

- (vii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (viii) amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement.
- (c) To the extent that such assets and rights referred to in Section 6.1(b)(vii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Breach of Refinancing Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay such termination sum in accordance with Section 8 of this Schedule 23.

7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT

7.1 Consequences

- (a) If Project Co terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement, Contracting Authority shall pay to Project Co a termination sum equivalent to the greater of:
 - (i) an amount calculated and payable in accordance with the Breach of Refinancing Termination Sum, provided that, with respect to the calculation of the amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a) of this Project Agreement under Section 6.1(b)(viii), Contracting Authority shall only set off amounts which are due to Contracting Authority by Project Co pursuant to the terms of this Project Agreement if and to the extent the Breach of Refinancing Termination Sum exceeds the Senior Debt Amount; and

- (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) Contracting Authority shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

8. GENERAL

8.1 Payment and Interest Following Non-Project Co Default Termination

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) Contracting Authority shall:
 - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) indemnify Project Co as provided in Section 53.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, within 60 days after the Invoice Date, pay to Contracting Authority the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

8.2 Payment and Interest Following Project Co Default – Retendering Procedure

- (a) Subject to Section 8.2(b), following the retendering procedure set out in Section 3.3 of this Schedule 23, Contracting Authority shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
- (i) the date on which Contracting Authority enters into the New Agreement with the New Project Co; and
 - (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 – Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that Contracting Authority shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),

and Contracting Authority shall indemnify Project Co as provided in Section 53.2(c) of this Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which Contracting Authority enters into the New Agreement with the New Project Co:

- (iii) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
 - (iv) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay Contracting Authority the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.3 Payment and Interest Following Project Co Default – No Retendering Procedure

- (a) Subject to Section 8.3(b), if Contracting Authority follows the no retendering procedure set out in Section 3.4 of this Schedule 23, Contracting Authority shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) above.

Thunder Bay Correctional Complex Project

- (b) If the Adjusted Estimated Fair Value is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay Contracting Authority the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 53.1(e) in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.4 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

8.5 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

8.6 Outstanding Debt Amounts

- (a) Contracting Authority shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Contracting Authority's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

SCHEDULE 24

EXPIRY TRANSITION PROCEDURE

1. Independent Inspector

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with Contracting Authority's procurement policies, engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the Facility pursuant to this Schedule 24.
- 1.2 Project Co and Contracting Authority shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
- (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with the provisions for selecting a Member or arbitrator pursuant to Schedule 27 – Dispute Resolution Procedure, applicable mutatis mutandis.

2. Condition of Facilities on Expiry

- 2.1 Subject to the exceptions specified in Section 2.2, on the Expiry Date:
- (a) each element of the Facility and the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the Facility having been maintained in accordance with the Scheduled Maintenance Plan and the Lifecycle Replacement Schedule, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-

Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the Facility shall be in good operating order (Normal Wear and Tear excepted) and capable of performing in accordance with the performance specifications and standards set out in Schedule 15 – Output Specifications; and
- (c) each element of the Facility shall be in a condition which ensures that such element of the Facility will have a reasonable likelihood of completing its Replacement Lifecycle and/or remaining lifecycle in good condition and operating order (Normal Wear and Tear excepted), and, if applicable, shall not have any structural faults, deterioration and/or defect,

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any Equipment to be maintained by Contracting Authority in accordance with this Project Agreement.

3. Facility Inspections

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a written report (an “**Expiry Transition Facility Condition Report**”) not less than 7 years prior to the Expiry Date that:

- (a) identifies the condition of the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) in relation to the Expiry Transition Requirements;
- (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the business case methodology and lifecycle strategy set out in Appendix A hereto;
- (c) identifies any works required to ensure the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”);
- (e) details how the Expiry Transition Works Costs were calculated; and
- (f) identifies any works required and the timing for such works to ensure that, in respect of each element of the Facility, such element can be used and does not need

to be replaced, refreshed or refurbished until the applicable Anticipated Lifecycle Replacement Year for such element of the Facility, subject to the exception specified in Section 2.2, as identified in Appendix A of this Schedule 24. Such works shall form part of the Expiry Transition Works and the estimated costs of such works shall form part of the Expiry Transition Works Costs.

- 3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Facility and produce and deliver to each of the Parties an updated Expiry Transition Facility Condition Report (each a “**Revised Expiry Transition Facility Condition Report**”) on each anniversary of the date of the original Expiry Transition Facility Condition Report.
- 3.3 The Scheduled Maintenance Plan, the Five Year Maintenance Plan and the Lifecycle Replacement Schedule shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report not already included in the then current Scheduled Maintenance Plan, Five Year Maintenance Plan or Lifecycle Replacement Schedule.
- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 – Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 – Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report, then either the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report, as the case may be, shall be deemed to be amended accordingly, and the Scheduled Maintenance Plan, Five Year Maintenance Plan and Lifecycle Replacement Schedule, as amended pursuant to Section 3.3, and all deductions and payments permitted or required by Section 4, shall be adjusted accordingly.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the Expiry Transition Facility Condition Report, for the purposes of Section 4.2, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Lifecycle Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Lifecycle Costs, the difference between the Expiry Transition Works Costs and the Expiry Lifecycle Costs shall be apportioned equally over the Payment Periods from the date the Expiry Transition Facility Condition Report is to be delivered hereunder to the Expiry Date (each installment being the “**Expiry Transition Amount**”). If the Expiry Transition Facility Condition Report is delivered

Thunder Bay Correctional Complex Project

after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the date the Expiry Transition Facility Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.2 or 3.5, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.

- 4.2 Subject to Sections 4.3 and 4.5, Contracting Authority may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, Contracting Authority may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 Contracting Authority shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. Contracting Authority shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then Contracting Authority shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by Contracting Authority to evaluate such request.
- 4.5 Following the date of any Revised Expiry Transition Facility Condition Report, the Expiry Transition Amount under Section 4.1 shall be recalculated and if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Expiry Transition Facility Condition Report) together with the deductions currently scheduled to be made from the remaining Monthly Service Payments under Section 4.2 (and under any previous application of this Section 4.5) is less than the revised Expiry Transition Amount, then Contracting Authority may additionally deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4, Project Co may (and if, at any time, the amounts which Contracting Authority is permitted to deduct pursuant to Sections 4.2 and 4.5 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from Contracting

Authority, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of Contracting Authority in an amount equal to the amounts which Contracting Authority is permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to Contracting Authority.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of Contracting Authority to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of Contracting Authority in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

6. Final Facility Condition Report

6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a Expiry Transition Facility Condition Report within 30 Business Days after the Expiry Date (the “**Final Expiry Transition Facility Condition Report**”) that documents whether the Facility met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.

6.2 If the Final Expiry Transition Facility Condition Report identifies any Expiry Transition Works, Contracting Authority may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and Contracting Authority shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.

6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final Expiry Transition Facility Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.

6.4 If no Expiry Transition Works are identified in the Final Expiry Transition Facility Condition Report, Contracting Authority shall, within 20 Business Days of receipt by Contracting Authority of the Final Expiry Transition Facility Condition Report, pay the

funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless Contracting Authority disputes the Final Expiry Transition Facility Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 – Dispute Resolution Procedure.

**APPENDIX A
LIFECYCLE REPLACEMENT SCHEDULE**

[REDACTED]

SCHEDULE 25

**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS**

**ARTICLE 1
WORKS PHASE INSURANCE COVERAGE**

- 1.1 Subject to Article 8, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
 - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
 - (c) Project Specific Professional Liability; and
 - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Article 8, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Automobile Liability;
 - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
 - (c) Aircraft and Watercraft Liability (if any exposure);
 - (d) “All Risks” Marine Cargo (if any exposure);
 - (e) “All Risks” Contractors’ Equipment;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

ARTICLE 2
SERVICES PHASE INSURANCE COVERAGE

- 2.1 Subject to Article 8, from and after the Substantial Completion Date and until the Termination Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Property;
 - (b) Boiler and Machinery;
 - (c) Commercial General Liability and Non-Owned Automobile Liability;
 - (d) Environmental Impairment (Pollution) Liability;
 - (e) Automobile Liability;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

ARTICLE 3
NO LIMIT ON RECOVERY

- 3.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Contracting Authority or by Project Co, shall in no way limit Project Co’s liability or obligations to Contracting Authority or Contracting Authority’s liability or obligations to Project Co, as applicable.

ARTICLE 4
ADDITIONAL COVER

- 4.1 Without prejudice to the other provisions of this Schedule 25, Contracting Authority and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 Contracting Authority reserves the right to require Project Co to purchase such additional insurance coverage as Contracting Authority may reasonably require. Contracting Authority also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Co Services and the Works, contract value, industry standards, and availability of insurance) as Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Contracting Authority.

**ARTICLE 5
RESPONSIBILITY FOR DEDUCTIBLES**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

**ARTICLE 6
COOPERATION WITH INSURER'S CONSULTANT**

- 6.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then Contracting Authority and Project Co shall, and shall require the Contracting Authority Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between Project Co and Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**ARTICLE 7
INSURANCE ADJUSTMENT**

- 7.1 For purposes of this Article 7, the following terms shall have the following meanings:
- (a) **“Actual Relevant Insurance Cost”** means the aggregate of the annual insurance premiums reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during each Insurance Review Period (expressed on an annualized basis for any policies covering multiple Insurance Review Periods), but excluding Taxes and all broker's fees and commissions.
 - (b) **“Base Relevant Insurance Cost”** means the aggregate of the annual insurance premiums which were projected to be incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during each Insurance Review Period, which amounts exclude Taxes and all broker's fees and commissions and are set out in the Financial Model.
 - (c) **“Insurance Adjustment”** means, in respect of a Severe Insurance Market Price Increase, an amount equal to (i) the Actual Relevant Insurance Cost for the current Insurance Review Period minus (ii) the average of the Actual Relevant Insurance Costs in the two Insurance Review Periods immediately prior to the current Insurance Review Period, as set out in the Annual Insurance Reports in respect of the relevant Insurance Review Periods. Notwithstanding the foregoing, with respect to the first two Insurance Review

Periods, where any amount(s) for the Actual Relevant Insurance Cost does not exist as a result of Project Co not maintaining or causing to be maintained any Relevant Insurance before the Relevant Insurance Inception Date, with respect to such amount(s), for the purposes of this Project Agreement, the Actual Relevant Insurance Cost shall be calculated by using the average of the annual insurance premiums that Project Co can demonstrate to Contracting Authority's reasonable satisfaction would have been reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during the applicable year(s) immediately prior to the Relevant Insurance Inception Date (but excluding Taxes and all broker's fees and commissions) if Project Co were to have maintained or caused to be maintained the Relevant Insurance during such year(s).

- (d) **“Insurance Cost Factor”** means the amount calculated in accordance with the following formula:

$$ICF_n = ARIC_n / ARIC_{n-2}$$

Where:

“ICF_n” is the Insurance Cost Factor for the current Insurance Review Period n;

“ARIC_n” is the Actual Relevant Insurance Cost for the current Insurance Review Period n, as set out in the Annual Insurance Report; and

“ARIC_{n-2}” is the average of ARIC over the two Insurance Review Periods immediately prior to the current Insurance Review Period n, as set out in the Annual Insurance Reports in respect of such Insurance Review Periods. Notwithstanding the foregoing, with respect to the first two Insurance Review Periods, where any amount(s) for ARIC does not exist as a result of Project Co not maintaining or causing to be maintained any Relevant Insurance before the Relevant Insurance Inception Date, with respect to such amount(s), ARIC_{n-2} shall be calculated by using the average of the annual insurance premiums that Project Co can demonstrate to Contracting Authority's reasonable satisfaction would have been reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during the applicable year(s) immediately prior to the Relevant Insurance Inception Date (but excluding Taxes and all broker's fees and commissions) if Project Co were to have maintained or caused to be maintained the Relevant Insurance during such year(s)

- (e) **“Insurance Review Date”** means the Relevant Insurance Inception Date and thereafter each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance and prior to the Expiry Date.
- (f) **“Insurance Review Period”** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond

the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.

- (g) “**Severe Insurance Market Price Increase**” means the occurrence of circumstances generally prevailing in the worldwide insurance market that cause the Actual Relevant Insurance Cost to materially increase in an Insurance Review Period with the result that the Insurance Cost Factor for such Insurance Review Period is greater than or equal to 1.20, excluding, for greater certainty, any increase in the Actual Relevant Insurance Cost caused by or connected with claims made as a result of acts or omissions of Project Co or any Project Co Party or re-rating of Project Co or any Project Co Party.
- (h) “**Relevant Insurance**” means all policies of insurance to be obtained or caused to be obtained by Project Co in accordance with Article 2 of this Schedule 25.
- (i) “**Relevant Insurance Inception Date**” means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and Contracting Authority, respectively, being the Substantial Completion Date.

7.2 No later than 90 days prior to the Relevant Insurance Inception Date and no later than 60 days prior to each other Insurance Review Date thereafter, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and Contracting Authority (the “**Annual Insurance Report**”) and submit such report to Contracting Authority. Each Annual Insurance Report shall contain the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost, together with evidence satisfactory to Contracting Authority, acting reasonably, in support of the Actual Relevant Insurance Cost;
- (b) the Base Relevant Insurance Cost;
- (c) the calculation of the Insurance Cost Factor, together with evidence satisfactory to Contracting Authority, acting reasonably, in support of the Insurance Cost Factor;
- (d) any Severe Insurance Market Price Increase, together with
 - (i) the opinion of Project Co’s insurance broker as to the reasons for such Severe Insurance Market Price Increase; and
 - (ii) evidence satisfactory to Contracting Authority, acting reasonably, (A) in support of such opinion (including, for greater certainty, evidence that the applicable increase in the Actual Relevant Insurance Cost was not caused by or connected with claims made as a result of acts or omissions of Project Co or any Project Co Party or re-rating of Project Co or any Project Co Party), and (B) that Project Co has complied with Section 7.4.

Thunder Bay Correctional Complex Project

- 7.3 Project Co shall notify Contracting Authority as soon as possible and, in any event, within 15 Business Days, of becoming aware of a Severe Insurance Market Price Increase or circumstances that are reasonably likely to cause a Severe Insurance Market Price Increase.
- 7.4 In the event that Project Co is or is reasonably likely to be affected by a Severe Insurance Market Price Increase, Project Co shall, and shall require all Project Co Parties to, take commercially reasonable steps to eliminate or mitigate such actual or potential Severe Insurance Market Price Increase, including the exertion of commercially reasonable efforts to obtain a better price for the Relevant Insurance. In the event that Project Co does not comply with its obligations under this Section 7.4, Project Co shall not be entitled to an Insurance Adjustment and no Insurance Adjustment shall be made.
- 7.5 In accordance with Schedule 20 – Payment Mechanism and subject to Sections 7.4, 7.6 and 7.7, in the event that a Severe Insurance Market Price Increase occurs, then the Annual Service Payment will be adjusted by the Insurance Adjustment Amount.
- 7.6 In the event that an Annual Insurance Report is not submitted to Contracting Authority pursuant to Section 7.2, then, until such time as an Annual Insurance Report is submitted, (a) one or more Major Quality Failures shall arise and one or more Deductions shall apply in accordance with Part 6 of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism, and (b) no Insurance Adjustment shall be made.
- 7.7 In the event that an Annual Insurance Report is submitted to Contracting Authority pursuant to Section 7.2 but in Contracting Authority’s reasonable opinion, such Annual Insurance Report fails to satisfy the requirements of Section 7.2, then Contracting Authority may, within 15 Business Days of Contracting Authority’s receipt of such Annual Insurance Report, provide notice to Project Co of such failure and the reasons why, in Contracting Authority’s reasonable opinion, the Annual Insurance Report fails to satisfy such requirements. If Contracting Authority provides such a notice to Project Co, then Project Co shall have 10 Business Days of Project Co’s receipt of such notice to submit a revised Annual Insurance Report to Contracting Authority that satisfies the requirements of Section 7.2 (a “**Revised Annual Insurance Report**”). If Project Co fails to submit such Revised Annual Insurance Report to Contracting Authority before the expiry of such 10 Business Day period, then, until such time as such Revised Annual Insurance Report is submitted, (a) one or more Major Quality Failures shall arise and one or more Deductions shall apply in accordance with Part 6 of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism, and (b) no Insurance Adjustment shall be made.

**ARTICLE 8
UNINSURABLE RISKS**

- 8.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:

Thunder Bay Correctional Complex Project

- (i) where Applicable Laws require that the insurer be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurer be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
 - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.
 - (c) Project Co has the onus of demonstrating, to Contracting Authority's reasonable satisfaction that the foregoing definition applies to a particular risk.
- 8.2 Project Co shall notify Contracting Authority as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Contracting Authority with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and Contracting Authority shall, as soon as possible following the provision of the notice referred to in Section 8.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Contracting Authority are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and Contracting Authority, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2 of this Schedule 25, Contracting Authority may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or
 - (b) terminate this Project Agreement in accordance with Section 44.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.5 On the occurrence of an Uninsurable Risk, Contracting Authority may, in its absolute discretion, either:

Thunder Bay Correctional Complex Project

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
- (b) terminate this Project Agreement in accordance with Section 44.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 8.6(a) of this Schedule 25, Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Article 8 shall no longer apply to such risk.

8.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**ARTICLE 9
TOTAL OR SUBSTANTIAL DESTRUCTION**

9.1 In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**ARTICLE 10
SUBCONTRACTORS**

10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which

Contracting Authority may suffer as a direct result of Project Co's failure to comply with the foregoing.

- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in this Project Agreement regarding new and replaced Subcontractors shall be complied with.

**ARTICLE 11
RENEWAL**

- 11.1 Project Co shall provide to Contracting Authority, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Contracting Authority, acting reasonably.

**ARTICLE 12
NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, Contracting Authority, the Contracting Authority Parties, IO and SolGen as Named Insureds to the extent specified in Appendix A of this Schedule 25;
 - (b) include Contracting Authority, the Contracting Authority Parties, IO, SolGen, the Lenders' and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests specified in Appendix A of this Schedule 25;
 - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A to this Schedule 25 and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A to this Schedule 25, contain a waiver of subrogation as against Contracting Authority, IO, SolGen, Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;

- (d) with respect to “All Risks” Course of Construction Property, including Boiler and Machinery insurance specified in Part 1 of Appendix A to this Schedule 25, contain a waiver of subrogation as against SolGen and its shareholders, officials, directors, officers, employees, servants, consultants and agents.
- (e) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (f) to the extent Contracting Authority, the Contracting Authority Parties, SolGen and IO are Named Insureds (as specified in Appendix A of this Schedule 25) or Additional Insureds or loss payees (as specified in Appendix A of this Schedule 25), be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority, the Contracting Authority Parties, SolGen or IO without any right of contribution of any insurance carried by Contracting Authority, SolGen or IO.

ARTICLE 13

CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 13.1 Prior to the commencement of any part of the Works, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Works, Project Co will provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to Contracting Authority no later than 90 days after execution of this Project Agreement.
- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to Contracting Authority no later than 90 days after the Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to Contracting Authority no later than 90 days prior to the Substantial Completion Date.

ARTICLE 14

FAILURE TO MEET INSURANCE REQUIREMENTS

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Contracting Authority a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Contracting Authority shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of

Project Co, and the cost thereof shall either, at Contracting Authority’s option, be payable by Project Co to Contracting Authority on demand or be deducted by Contracting Authority from the next payment or payments otherwise due to Project Co.

- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Contracting Authority, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

**ARTICLE 15
MODIFICATION OR CANCELLATION OF POLICIES**

- 15.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to Contracting Authority, the Lenders’ Agent, and SolGen. For greater certainty, the terms “adversely reduced”, “adversely materially altered” and “adversely materially amended” as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to Contracting Authority, the Lenders’ Agent and SolGen.
- 15.3 With respect to the Operational Term insurances, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A to this Schedule 25.
- 15.4 With respect to insurances described in Section 1.1(a), (b) and (d), Section 1.2(d) and Section 2.1(a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting Authority, IO, SolGen or any other Insured, but only to the extent that such breach is not known to these parties.

**ARTICLE 16
INSURERS**

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Contracting Authority and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
 - (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (**S&P**); or
 - (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to Contracting Authority and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

**ARTICLE 17
POLICY TERMS AND CONDITIONS**

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Contracting Authority and its insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

**ARTICLE 18
FAILURE TO COMPLY**

- 18.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

ARTICLE 19
PERFORMANCE SECURITY REQUIREMENTS

19.1 [REDACTED]

ARTICLE 20
INSURANCE TRUST AGREEMENT

20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case relate to Equipment purchased, owned or leased by Contracting Authority, or SolGen shall be payable solely to Contracting Authority or SolGen, as applicable, and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

APPENDIX A – INSURANCE REQUIREMENTS

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Thunder Bay Correctional Complex Project

Works Phase Insurance – Part 1 Thunder Bay Correctional Complex Project

From Commercial Close until the Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	Value declared to be equal to the estimated completed project value of the Facility, including Property of Every Description, all equipment (including, for clarity all Equipment and Existing Equipment and all other property supplied by Contracting Authority or the Contracting Authority Parties for incorporation into the Facility.	[REDACTED] % of value at risk time of loss / \$[REDACTED] minimum Earthquake	<p>“All Risks” Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	TBD
		\$[REDACTED] Flood		
		\$[REDACTED] Water Damage, first loss		
		\$[REDACTED] Water Damage, second loss		
	Delay in Start-up \$[REDACTED], covering a 36 month indemnity period, including Contingent Delayed Start-Up regarding losses at Suppliers’ or Manufacturers’ premises resulting from FLEXA perils (minimum \$[REDACTED] million sub-limit)	\$[REDACTED] Water Damage, third loss		
		\$[REDACTED] Water Damage, fourth loss and all losses thereafter		
		\$[REDACTED] Testing and Commissioning		
	Soft Costs \$[REDACTED] (representing [REDACTED] % of Recurring / Continuing Soft Costs)	\$[REDACTED] All other losses		
	Extra Expense (minimum \$[REDACTED] million sub-limit)	45 days waiting period applicable to time element coverages		
	Expediting Expense (minimum \$[REDACTED] million sub-limit)	48 hour waiting period applicable to Off Premises Services Service Interruption		
Principal Extensions:				
	<ul style="list-style-type: none"> Replacement Cost Valuation (Property) 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Most Recent Technology Replacement Cost Valuation (equipment or machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Transit (minimum \$[REDACTED] million sub-limit) • Off Site storage (minimum \$[REDACTED] million sub-limit) • By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] million sub-limit only with respect to existing or renovated buildings) • Debris Removal ([REDACTED]% of loss; maximum \$[REDACTED] million sub-limit) • Off-Premises Services Interruption (minimum \$[REDACTED] million sub-limit aggregated for both Soft Costs and Delayed Opening) • Professional Fees (minimum \$[REDACTED] million sub-limit) • Fire Fighting Expenses (minimum \$[REDACTED] million sub-limit) • Valuable Papers (minimum 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Accounts Receivable (minimum \$[REDACTED] million sub-limit) • Green Building and LEED Upgrades (subject to a \$[REDACTED] million sub-limit) • Defence Costs (subject to a \$[REDACTED] million sub-limit) • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to x-ray machines, subject to a \$[REDACTED] million sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] million sub-limit and in the aggregate) • Ammonia Contamination (minimum \$[REDACTED] million sub-limit and in the aggregate) • LEED Recertification Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks; minimum \$[REDACTED] million sub-limit aggregated for both Soft Costs and Delayed Opening)(time element and sub-limit applicable to non-physical damage losses and included within Soft Costs) • Prevention of Ingress/Egress (8 weeks; minimum \$[REDACTED] million sub-limit aggregated for 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<p>both Soft Costs and Delayed Opening) (time element and sub-limit applicable to non-physical damage losses and included within Soft Costs)</p> <ul style="list-style-type: none"> • Permission for Partial Occupancy prior to Substantial Completion • Cost of Carrying Project Financing (36 Months), included in Delayed Start-Up or Soft Costs coverage • Margin of Profit Extension for Contractors • Testing and Commissioning (120 days) <p>Principal Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Asbestos • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard • War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use • Contractors' equipment (unless values are declared) • Sanctions Clause • Communicable disease • Munich Re 121 Endorsement 			

Thunder Bay Correctional Complex Project

<i>Comments</i>	<ul style="list-style-type: none">• Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants. IO, SolGen and Contracting Authority, as their respective interests may appear• No provision permitted allowing a coinsurance penalty• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured• Additional key extensions of coverage:<ul style="list-style-type: none">– Underground services, temporary works involved in the project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction project– Losses payable in accordance with the Insurance Trust Agreement– Upon Substantial Completion, coverage for the Facility will cease and be replaced by Property and Boiler & Machinery insurance – Services Phase– Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, IO, SolGen, Contracting Authority, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing– Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded– Errors and Omissions– Breach of Conditions– Interim Payments Clause– Non-Vitiation
Underwriters	<ul style="list-style-type: none">• Principal underwriters in compliance with Clause 16 of this Schedule 25.

Thunder Bay Correctional Complex Project

Works Phase Insurance – Part 1 Thunder Bay Correctional Complex Project

From Commercial Close until the Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</p>	<p>\$(REDACTED) million each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$(REDACTED) million Non-Owned Automobile Liability • \$(REDACTED) million Sudden and Accidental Pollution and Hostile Fire Pollution Liability • \$(REDACTED) million “All Risks” Tenants’ Legal Liability • \$(REDACTED) million Prairie or Forest Fire Fighting Expenses • \$(REDACTED) million Employee Benefits Administrative Errors and Omissions • \$(REDACTED) million Hot Roofing (subject to the applicable conditions of the exclusion) • \$(REDACTED) Legal Liability for Damages to Non-Owned Automobiles (SEF 94) • \$(REDACTED)/\$(REDACTED) Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) 	<p>\$(REDACTED) per occurrence</p> <p>\$(REDACTED) per claim with respect to each SEF 94, Tenant’s Legal Liability, Employee Benefits, Administrative Errors and Omissions</p> <p>\$(REDACTED) Prairie or Forest Fire Fighting Expenses</p>	<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the Substantial Completion Date.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – Sudden and Accidental and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours’ notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

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Thunder Bay Correctional Complex Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunneling/grading and similar operations associated with the Works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-Owned Automobile • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental and Hostile Fire Pollution – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Accident Benefits • Limited UAV (maximum 20 kilograms) • Worldwide Territory, subject to suits being brought in Canada or the US 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Principal Exclusions:				
<ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use • Sanctions Clause • Asbestos • Communicable diseases • Lead • Silica • United States of America Jurisdiction • Terrorism • War • Hot Roofing (exclusion exception and sublimit availability is subject to applicable conditions) • Contractors' Rework 				
<i>Comments</i>				

Thunder Bay Correctional Complex Project

- Named Insured includes Project Co and its Affiliates, Contracting Authority, IO, SolGen, the Lenders, Project Co parties involved in the Works, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site or the Facility; engineers, architects, consultants and sub-consultants (other than for professional liability); others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site and Facility
- Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds
- Insurance primary without right of contribution of any other insurance carried by any Named Insured
- Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire, Hot Roofing, Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted
- Waiver of Subrogation or insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Contracting Authority, IO, SolGen, the Construction Contractor, subcontractors; sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability); Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing
- Non-Vitiation

Underwriters Principal underwriters in compliance with Clause 16 of this Schedule 25.

Thunder Bay Correctional Complex Project

Works Phase Insurance – Part 1 Thunder Bay Correctional Complex Project

From Commercial Close until the Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	<p>[\$REDACTED] million minimum per claim / [\$REDACTED] million in the aggregate (inclusive of defense and related costs and supplementary payments).</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Primary insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the 	[\$REDACTED] per claim	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to the Substantial Completion Date plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	investigation, defence, settlement, arbitration or litigation of claims <ul style="list-style-type: none"> • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide Territory, subject to suits brought in Canada 			
	Principal Exclusions: <ul style="list-style-type: none"> • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement • Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees 			

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies • Sanctions Clause • Cyber risk • Communicable disease • Insured vs. Insured 			
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured: All engineers, architects, and other professional consultants that provide professional design services in connection with the Project • Professional Services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier • Retroactive Date: Full retroactive coverage from date of first design activity 			
Underwriters	<ul style="list-style-type: none"> • Principal underwriters in compliance with Clause 16 of this Schedule 25. 			

Thunder Bay Correctional Complex Project

Works Phase Insurance – Part 1 Thunder Bay Correctional Complex Project

From Commercial Close until the Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</p> <p>Combined Limit subject to Commercial Pollution Legal Liability with a minimum \$[REDACTED] million sub-limit</p>	<p>\$[REDACTED] million per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period • Microbial Matter (including Fungus/Mould) • Underground / above ground storage tanks • First Party Restoration and Clean-up Costs • Disposal Site Extension, including Transportation (reporting required) • Duty to Defend • Canada and US Territory • Contractual Liability • Emergency Response Costs <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Terrorism • War • Intentional Non-compliance • Prior Knowledge/Known Conditions/Pre-Existing Conditions (exception for exacerbation, aggravation, worsening) • WSIB • Employers' Liability • Professional Liability 	<p>\$[REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after the Substantial Completion Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

Thunder Bay Correctional Complex Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
		<ul style="list-style-type: none"> Nuclear Liability Property Damage to Motor Vehicles during Transportation Communicable disease Sanctions Clause 		
<i>Comments</i>		<ul style="list-style-type: none"> Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants Contracting Authority, IO, SolGen, Lenders and the Lenders' Agent will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 		
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Thunder Bay Correctional Complex Project

Works Phase Insurance – Part 1 Thunder Bay Correctional Complex Project

From Commercial Close until the Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Automobile Liability	<p>[\$REDACTED] million (Minimum) for Project Co and Project Co’s Construction Contractor vehicles</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p>	
	<p>[\$REDACTED] million (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p>	
			<p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Contracting Authority, the Lenders, SolGen and IO.</p>	
Commercial General Liability and Non-Owned Automobile Liability	<p>[\$REDACTED] million each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co’s Construction Contractor</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p>	
<p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct</p>	<p>[\$REDACTED] million each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p>		<p>This Commercial General Liability Insurance will cover off-site activities connected to the project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy’s Products and Completed Operations extension period.</p>	
	<p>In both instances, limits of liability may be structured as any combination of primary plus</p>			

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Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
and Contingent Employers Liability, Products and Completed Operations Liability, and Owner’s and Contractor’s Protective extensions	supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess Sub-limits (Project Co and Project Co’s Construction Contractor): <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • \$[REDACTED] million Prairie or Forest Fire Fighting Expenses 		This insurance shall be maintained in effect, during the Works phase until twelve (12) months following the earlier of the termination of the insured’s person’s involvement in the Works and the date of issuance of the Substantial Completion Certificate for the Works. Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Contracting Authority, the Lenders and IO.	
	Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works): <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/Demolition/Excavating/Under-Pinning/Pile Driving/Shoring/Caisson Work/Work below ground surface/tunneling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles’ (partial road use) 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Unlicensed equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US 			
	<p>Principal Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the project site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use • Asbestos • Terrorism • Communicable diseases • Lead • Silica • United States of America Jurisdiction 			

Thunder Bay Correctional Complex Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • War • Contractors' Rework • Sanctions Clause 			
<i>Comments</i>	<ul style="list-style-type: none"> • Contracting Authority, IO, SolGen and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Aircraft and Watercraft Liability (If any exposure)	Minimum \$[REDACTED] million inclusive, including \$[REDACTED] million passenger hazard – Owned Aircraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Contracting Authority, the Lenders and IO.	
	Minimum \$[REDACTED] million inclusive – Non-Owned Aircraft			
	Minimum \$[REDACTED] million inclusive Owned or Non-Owned Watercraft			
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> Contracting Authority, IO, SolGen and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates 			
<hr/>				
“All Risks” Ocean Marine Cargo (if any exposure)	[REDACTED]% Replacement Cost Valuation basis	[\$REDACTED]	Property of Every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.	
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants. IO, SolGen and Contracting Authority, as their respective interests may appear. 			

Thunder Bay Correctional Complex Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>“All Risks” Contractors’ Equipment</p> <p>To cover Project Co, the Construction Contractors, subcontractors, sub-subcontractors consultants and sub-consultants</p>	<p>If site equipment is three years old or less the sum insured shall be equal to 100% of the replacement value of all contractors equipment used at the project. If site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.</p>		<p>All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment used at the project site.</p>	
<p><i>Comments</i> Waiver of Subrogation rights against Project Co, Contracting Authority, IO, SolGen, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent, as well as officers, directors, shareholders and employees of the foregoing</p>				

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>Comprehensive Crime</p>	<p>[\$REDACTED] million per loss with respect to Employee Dishonesty</p>		<p>Comprehensive Crime insurance, including Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties. Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors’ Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co) Principal underwriters in compliance with Clause 16 of this Schedule 25.

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the project site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Contracting Authority evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

Thunder Bay Correctional Complex Project

Services Phase Insurance – Part 2 Thunder Bay Correctional Complex Project

Insurance to be provided, or caused to be provided, by Project Co from the Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>“All Risk” Property</p>	<p>Full Replacement Cost of all property associated with the Facility, while on the Site or while in transit, including material and supplies destined for incorporation into the Facility or intended to be used in the performance of Project Co Services and including all Equipment.</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] million sub-limit)</p> <p>If commercially available, such business interruption insurance should be extended to include infectious disease as a peril that triggers the Business Interruption coverage</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (equipment or machinery) • Flood (to policy limit with annual aggregate) 	<p>[REDACTED]% of loss value / \$[REDACTED] minimum</p> <p>Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] Water Damage</p> <p>\$[REDACTED] All other losses</p> <p>45 days waiting period applicable to time element coverages</p>	<p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured and including necessary Business Interruption and Expediting Expenses.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Debris Removal (minimum \$[REDACTED] million sub-limit) • Transit (minimum \$[REDACTED] million sub-limit) • Unnamed locations (minimum \$[REDACTED] million sub-limit) • Professional Fees (minimum \$[REDACTED] million sub-limit) • Fire Fighting Expenses (minimum \$[REDACTED] million sub-limit) • Valuable Papers (minimum \$[REDACTED] million sub-limit) • Accounts Receivable (minimum \$[REDACTED] million sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] million sub-limit) • Civil Authority Access Interruption (8 weeks; minimum \$[REDACTED] million sub-limit) • Prevention of Ingress/Egress (8 weeks; minimum \$[REDACTED] million sub-limit) • Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable) 			

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Thunder Bay Correctional Complex Project

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • By-Laws including demolition and increased replacement/repair costs • Off premises services interruption • Margin of profit extension for contractors • Radioactive contamination caused by sudden and accidental release of radioactive isotopes resulting from an accident to x-ray machines • Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged) <p>Principal Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured • War risk • Terrorism • Nuclear or radioactive contamination, except regarding radioactive isotopes intended for scientific, medical, industrial or commercial use • Communicable disease • Sanctions Clause 			
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured will include Project Co, Contracting Authority, IO, SolGen and the Lenders - Lenders will be covered as Loss Payee and Mortgagee • All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement • No provision allowing a coinsurance penalty • Waiver of Subrogation against all Insureds, including but not limited to Project Co, the Lenders, Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing 			
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Services Phase Insurance – Part 2 Thunder Bay Correctional Complex Project

Insurance to be provided, or caused to be provided, by Project Co from the Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Boiler & Machinery	<p>Limit of \$[REDACTED] each Accident to an Insured Object</p> <p>\$[REDACTED] Business Interruption Insurance included, subject to a 24 month period of indemnity</p> <p>If a covered accident to insured objects(s) causes an interruption to Contracting Authority FM Services, the correctional facility or Correctional Complex Activities, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits (\$[REDACTED] million each):</p> <ul style="list-style-type: none"> • Ammonia Contamination • Automatic Coverage • Bylaws • Errors and Omissions • Expediting Expenses • Extra Expense • Hazardous Substances • Professional Fees • Water Damage 	<p>\$[REDACTED] per claim, Direct Damage</p> <p>Business Interruption – Maximum 45 day Waiting Period</p>	<p>From the date of Substantial Performance, or activation, whichever shall first occur, Boiler & Machinery insurance on a Comprehensive Policy Form basis including HVAC on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary business interruption and Expediting and Extra Expense coverage.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured will include Project Co, Contracting Authority, SolGen, IO and the Lenders - Lenders will be covered as Loss Payee and Mortgagee • All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement • As nearly as possible, coverage will be structured to dovetail with the Property Insurance 			
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Thunder Bay Correctional Complex Project

Services Phase Insurance – Part 2 Thunder Bay Correctional Complex Project

Insurance to be provided, or caused to be provided, by Project Co from the Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Commercial General Liability and Non-Owned Automobile Liability	<p>[\$REDACTED] million each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$[REDACTED] million Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance • \$[REDACTED] million Sudden and Accidental and Hostile Fire Pollution • \$[REDACTED] million “All Risks” Tenants’ Legal Liability, if any exposure • \$[REDACTED] million Prairie or Forest Fire Fighting Expense • \$[REDACTED] million Employee Benefits Administrative Errors and Omission Liability • \$[REDACTED] Legal Liability for Damages to Non-owned Automobiles (SEF 94) , unless coverage provided under automobile liability insurance • \$[REDACTED]/\$ [REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions 	<p>[\$REDACTED] per occurrence</p>	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use) and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Pollution Liability – Sudden and Accidental and Hostile Fire Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

Thunder Bay Correctional Complex Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
	<ul style="list-style-type: none"> • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunneling/grading, and similar operations as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-owned Automobile • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution – subject to sub-limit • Permission for unlicensed vehicles' partial road use • Unlicensed equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Voluntary Compensation • Worldwide Territory, subject to suits being brought in Canada or the US 			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
<p>Principal Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the project site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Asbestos • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use • Terrorism • War • Communicable disease • Lead • Silica • United States of America Jurisdiction • Sanctions Clause 				

<p><i>Comments</i></p>	<ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, Contracting Authority, SolGen, IO, the Lenders, Project Co parties involved in the Project Co Services, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site; engineers, architects, consultants, sub consultants, (other than for professional liability); and others as additional insureds, as may be required from time to time, arising from all operations and activities pertaining to the Project Co Services and the control and use of the Site • Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds • Insurance primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted
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Thunder Bay Correctional Complex Project

- Waiver of Subrogation or insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Contracting Authority, IO, SolGen, contractors, subcontractors; sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability); Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing

Underwriters Principal underwriters in compliance with Clause 16 of this Schedule 25.

Thunder Bay Correctional Complex Project

Services Phase Insurance – Part 2 Thunder Bay Correctional Complex Project

Insurance to be provided, or caused to be provided, by Project Co from the Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Environmental Impairment (Pollution) Liability	<p>Minimum \$[REDACTED] million per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period • Microbial Matter (including Fungus/Mould) • Biological Agents • Underground / above ground storage tanks • First Party Restoration and Clean-up • Duty to Defend • Contractual Liability <p>Principal Exclusions:</p> <ul style="list-style-type: none"> • Terrorism • Intentional Non-Compliance • WSIB • War • Employers Liability • Nuclear Liability • Professional Liability • Communicable disease • Sanctions Clause 	<p>\$[REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary on-site and off-site clean-up costs, as required. Coverage is extended to include underground and above ground storage tanks.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	

Thunder Bay Correctional Complex Project

<i>Comments</i>	<ul style="list-style-type: none">• Contracting Authority, IO, SolGen, Lenders and Lenders' Agent will be identified as Additional Insureds• The directors, officers, shareholders and employees of the foregoing will be identified as Additional Insureds
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.

Thunder Bay Correctional Complex Project

Services Phase Insurance – Part 2 Thunder Bay Correctional Complex Project

Services Phase Insurance to be provided, or caused to be provided, by Project Co. from the Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Automobile Liability	<p>[\$REDACTED] million (Minimum) for Project Co vehicles</p> <p>[\$REDACTED] million (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Contracting Authority, IO, SolGen and the Lenders.</p>	

<i>Comments</i>	
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.

Thunder Bay Correctional Complex Project

Services Phase Insurance – Part 2 Thunder Bay Correctional Complex Project

Services Phase Insurance to be provided, or caused to be provided, by Project Co. from the Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Comprehensive Crime	\$[REDACTED] million per extension		<p>Comprehensive Crime insurance including Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates. Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Coverage shall be maintained continuously, from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO, SolGen or the Lenders.</p>	
<hr/>				
<i>Comments</i>				
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of Project Co Services, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Project Co Services, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Contracting Authority evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the Service Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 34 of this Project Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Facility or otherwise on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Contracting Authority, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement Contracting Authority and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

Thunder Bay Correctional Complex Project

- 1.5 Records may, with the consent of Contracting Authority, not to be unreasonably withheld or delayed, be stored in electronic form if Contracting Authority has access thereto and will continue to have access thereto, such that Contracting Authority will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify Contracting Authority if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, at the expense of Contracting Authority, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
 - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a Contracting Authority Event of Default or pursuant to Section 44.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the

Thunder Bay Correctional Complex Project

Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to Contracting Authority:
- (a) not later than 60 days after the end of each fiscal quarter, part or all of which falls in a Contract Year, a copy of Project Co's unaudited financial statements; and
 - (b) not later than 120 days after the end of each fiscal year which falls in a Contract Year, a copy of Project Co's audited financial statements,

each in respect of that period and prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners. All such documents provided by Project Co to Contracting Authority shall be treated by Contracting Authority as Confidential Information of Project Co, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 49 of this Project Agreement.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the Contracting Authority Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
 - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;

Thunder Bay Correctional Complex Project

- (e) all records relating to any statutory inspections of the Facility or the Site, including any roadways;
- (f) any notices, reports, results and certificates relating to Substantial Completion and Final Completion of the Works and completion of the Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from Contracting Authority in connection with the provision of the Project Co Services, the monitoring of performance, the availability of the Facility, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the provision of the Project Co Services;
- (k) the invoices for Monthly Service Payments;
- (l) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Project Co’s liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Project Co’s liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (q) the financial accounts of Project Co referred to in Section 1.11 above;
- (r) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;

Thunder Bay Correctional Complex Project

- (s) any documents relating to insurance and insurance claims;
- (t) records related to the Plant Services;
- (u) all Jointly Developed Materials;
- (v) such documents as Contracting Authority may reasonably require relating to Business Opportunities proposed by Project Co in accordance with the Project Agreement; and
- (w) all documents in its possession related to security or background checks undertaken pursuant to Section 27.11 of the Project Agreement in accordance with the requirements of Schedule 7 - Security Clearance Check Requirements.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

SCHEDULE 27

DISPUTE RESOLUTION PROCEDURE

1. General

1.1 Definitions

- (a) In this Schedule 27, unless the context otherwise requires:
- (i) “**Arbitration Act, 1991**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
 - (ii) “**Arbitration Referral Period**” has the meaning given in Section 3.13(a).
 - (iii) “**CDB**” has the meaning given in Section 3.1(a).
 - (iv) “**CDB Chair**” has the meaning given in Section 3.1(c).
 - (v) “**CDB Expiry Date**” means the later of the Final Completion Date and the date that is three years following the Substantial Completion Date, as may be extended pursuant to Section 3.1(b).
 - (vi) “**CDB Member Agreement**” has the meaning given in Section 3.1(a).
 - (vii) “**CDB Member Statement**” has the meaning given in Section 3.3(a).
 - (viii) “**Claimant**” has the meaning given in Section 3.6(a).
 - (ix) “**Date of Commencement**” has the meaning given in Section 3.6(b).
 - (x) “**Dispute**” means all disagreements, disputes, or controversies arising during or following the Project Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the Project Agreement or any provision of the Project Agreement, the rights or obligations of the Parties under the Project Agreement, or the exercise or failure to exercise a discretion or power given to a Party under the Project Agreement.
 - (xi) “**Dispute Notice Supporting Documents**” has the meaning given in Section 1.6(b)(v).
 - (xii) “**Event of Default Dispute**” has the meaning given in Section 1.2(c).
 - (xiii) “**Member**” has the meaning given in Section 3.1(a).
 - (xiv) “**Notice of Arbitration**” has the meaning given in Section 4(d).

- (xv) “**Notice of Dispute**” has the meaning given in Section 1.6(a).
- (xvi) “**Notice of Request to Arbitrate**” has the meaning given in Section 4(d).
- (xvii) “**Party Executive**” has the meaning given in Section 2(a).
- (xviii) “**Party Executive DRP Termination Notice**” has the meaning given in Section 2(e);
- (xix) “**Party Representative**” means the Contracting Authority Representative or the Project Co Representative, as the context requires.
- (xx) “**Project Agreement Arbitration**” has the meaning given in Section 6(a).
- (xxi) “**Public Safety Dispute**” means any Dispute which Contracting Authority or Project Co, acting reasonably, determines involves an alleged breach of the Project Agreement by the other Party or any act or omission on the part of the other Party or any person with whom the other Party is legally affiliated or for whom the other Party is legally responsible (including a Project Co Party or a Contracting Authority Party, as applicable), which creates or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project or the Lands, or to the environment.
- (xxii) “**Reply**” has the meaning given in Section 3.7.
- (xxiii) “**Reply Period**” has the meaning given in Section 3.7.
- (xxiv) “**Respondent**” has the meaning given in Section 3.6(a).
- (xxv) “**Rules of Civil Procedure**” means R.R.O. 1990, Reg. 194: Rules of Civil Procedure under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended from time to time.
- (xxvi) “**Schedule 27 Procedural Dispute**” means a procedural Dispute regarding the interpretation of, or compliance with, this Schedule 27 (including any Dispute in respect of whether or not a Notice of Dispute complies with the requirements of Section 1.6(b)), other than with respect to any Dispute that has been or must be referred for resolution to Adjudication, arbitration or litigation in accordance with this Schedule 27, which shall be resolved as part of the underlying Adjudication, arbitration or litigation proceedings.
- (xxvii) “**Statement of Case**” has the meaning given in Section 3.6(a).
- (xxviii) “**Statement of Reply**” has the meaning given in Section 3.7.

- (xxix) “**Technical Member**” has the meaning given in Section 3.1(c).
- (xxx) “**Third Party Arbitration**” has the meaning given in Section 6(a).
- (xxxii) “**Third Party Litigation**” has the meaning given in Section 6(b).

1.2 Applicability of this Schedule 27

- (a) Except as otherwise provided in the Project Agreement, all Disputes shall be resolved in accordance with this Schedule 27.
- (b) Without limiting any provision of this Schedule 27, the Parties intend that all Disputes that arise:
 - (i) prior to the CDB Expiry Date, shall be resolved in accordance with Sections 1.7 and 2 to 5; and
 - (ii) on and following the CDB Expiry Date, shall be resolved in accordance with Sections 2, 4 and 5.
- (c) Notwithstanding Section 1.2(b) and without limiting or prejudice to a Party’s rights pursuant to Section 5, either Party may, by the delivery of written notice to the other Party, require that any Dispute in respect of whether a Project Co Event of Default or a Contracting Authority Event of Default has occurred under the Project Agreement or any Dispute in respect of or related to either Party’s right to terminate the Project Agreement pursuant to Section 42.3, Section 42.4 or Section 43.2 that arises at any time during the Project Term (an “**Event of Default Dispute**”) be resolved in accordance with Section 4. Sections 1.7, 2 and 3 shall not apply to any such Event of Default Dispute.

1.3 Independent Certifier Determinations and Decisions

- (a) Save and except as set out in Section 24.4(i) of the Project Agreement, (i) no determination or decision of the Independent Certifier made pursuant to the Project Agreement shall be binding upon the Parties, and (ii) any Party may refer a Dispute in respect of any such determination or decision of the Independent Certifier for resolution pursuant to this Schedule 27.
- (b) If a Party refers a Dispute in respect of a determination or decision of the Independent Certifier made pursuant to the Project Agreement for resolution by the CDB pursuant to Section 3, the Independent Certifier shall not be permitted to provide its opinion as an expert to the CDB pursuant to Section 3.9(c).

1.4 Continued Performance During Disputes

- (a) Project Co and Contracting Authority shall diligently carry out their respective obligations under the Project Agreement during the pendency of any Dispute. If during the pendency of any Dispute it is considered necessary by either Party to

proceed in respect of a matter that is in Dispute, then subject to Section 1.4(b), either Party may proceed without prejudice to either Party's rights under the Project Agreement in respect of the Dispute (including in respect of any entitlement of Project Co to a Delay Event, Compensation Event and/or Variation).

- (b) While a Dispute is pending (including any Schedule 27 Procedural Dispute), Contracting Authority may give such written instructions as in Contracting Authority's opinion are necessary in respect of the matter that is in Dispute, including for Project Co to proceed with the Project Operations which are the subject of the Dispute in accordance with the position of Contracting Authority, and Project Co shall comply with such written instructions forthwith.
- (c) Project Co acknowledges and agrees that (i) a pending Dispute will not justify Project Co's failure or refusal to comply with any written instructions given by Contracting Authority pursuant to Section 1.4(b), including in the event that complying with such written instructions would prevent Project Co from achieving Substantial Completion by the Scheduled Substantial Completion Date; and (ii) Project Co has no right to require a determination pursuant to this Schedule 27 of whether or not Contracting Authority is entitled to give such written instructions or whether or not Project Co is required to comply with such written instructions, before complying with such written instructions. Only concurrently with or after complying with Contracting Authority's written instructions shall Project Co be entitled to refer any such Dispute for resolution in accordance with this Schedule 27. For clarity, no Schedule 27 Procedural Dispute may be initiated in respect of any of the written instructions given by Contracting Authority issued pursuant to Section 1.4(b).
- (d) Any claims for time and/or cost consequences of complying with this Section 1.4(d) shall be addressed as part of the resolution of the applicable Dispute, provided that, in the event the matter in Dispute is determined in favour of Project Co, proceeding in accordance with Contracting Authority's written instructions pursuant to Section 1.4(b) shall (i) subject to and in accordance with Section 37 of the Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 38 of the Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

1.5 Mutual Resolution Efforts

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any Dispute arising between them:
 - (i) in the ordinary course in accordance with the Project Agreement starting with the Project teams of the Parties; and
 - (ii) if and to the extent the Project teams cannot resolve the Dispute in the ordinary course in accordance with the Project Agreement, by amicable

negotiations on a without prejudice basis between the Party Representatives.

- (b) Each Party shall provide full, frank, candid and timely disclosure of relevant facts, information and documents (subject to legal privilege) as may be required by the Project Agreement or reasonably requested by the other Party to facilitate the resolution of any Dispute.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under the Project Agreement.

1.6 Notice of Dispute

- (a) If the Parties are unable to resolve a Dispute pursuant to Section 1.5(a), either Party may deliver to the Party Representative of the other Party a written notice of dispute (the “**Notice of Dispute**”) in accordance with Section 1.6(b).
- (b) The Notice of Dispute must:
 - (i) expressly state that it is a “Notice of Dispute” pursuant to this Section 1.6;
 - (ii) to the extent available at the time the Notice of Dispute is delivered and following reasonable due diligence, provide particulars of the matters in Dispute sufficient to allow the Party who will receive the Notice of Dispute to understand and meaningfully respond to the Notice of Dispute;
 - (iii) describe any relief sought, including:
 - 1. the amount claimed, if any, or, if the amount claimed is not available, the approximate value of the claim; and
 - 2. any extension of time sought, or if that is not available, any anticipated extension of time sought;
 - (iv) identify whether the Dispute is a Public Safety Dispute;
 - (v) to the extent available at the time the Notice of Dispute is delivered, attach all key documents relevant to the Dispute on which the Party intends to rely for the purposes of resolving the Dispute pursuant to this Schedule 27 in the possession or control of such Party following reasonable due diligence (collectively, the “**Dispute Notice Supporting Documents**”); and
 - (vi) be signed by the Party Representative for the Party delivering the Notice of Dispute.

- (c) A Notice of Dispute must be delivered as a precondition to the Parties proceeding with any further steps contemplated in Section 1.7 or Sections 2 to 4.
- (d) The requirements of this Section 1.6 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 8(a).

1.7 Schedule 27 Procedural Disputes

- (a) Prior to the CDB Expiry Date, either Party may refer a Schedule 27 Procedural Dispute to the CDB for resolution in accordance with this Section 1.7 following the delivery of a Notice of Dispute in respect of the subject matter of the Procedural Dispute pursuant to Section 1.6(a).
- (b) Notwithstanding anything to the contrary in this Schedule 27, no Schedule 27 Procedural Dispute shall be required to be escalated for amicable resolution by the Party Executives pursuant to Section 2.
- (c) Except as otherwise expressly set out in this Section 1.7, Sections 3.5 to 3.13 shall not apply to any Schedule 27 Procedural Dispute.
- (d) Subject to Sections 1.7(e), 1.7(f) and 3.12, the CDB shall establish the process for the resolution of any Schedule 27 Procedural Dispute, and may make such orders or give such directions as the CDB considers appropriate.
- (e) Each Party shall provide the CDB with a brief submission in writing in support of its case with regards to each Schedule 27 Procedural Dispute. The responding Party shall provide the CDB with its brief submission within five Business Days of the delivery of the referring Party's brief submission or such longer period agreed by the Parties in writing or ordered by the CDB.
- (f) The CDB shall render its decision as soon as possible and within five Business Days after receiving the Parties' brief submissions with regards to a Schedule 27 Procedural Dispute, unless the CDB considers an oral hearing to be necessary, in which case the provisions of Sections 3.10(b) to 3.10(d) shall apply and the CDB shall render its decision as soon as possible and within five Business Days after the conduct of the oral hearing. The CDB may, acting reasonably and taking into account the complexity of and the prevailing circumstances related to the Schedule 27 Procedural Dispute, extend any such period by delivering written notice to the Parties.
- (g) The CDB's decision on a Schedule 27 Procedural Dispute shall be:
 - (i) made in accordance with the provisions of Sections 3.11(a) to 3.11(c) and 3.11(e); and
 - (ii) final and binding.

- (h) The Parties agree that no decision of the CDB on a Schedule 27 Procedural Dispute shall be subject to appeal, arbitration, litigation or any other dispute resolution process, and expressly waive any and all such rights in respect of each Schedule 27 Procedural Dispute resolved by the CDB.

2. Amicable Resolution by Party Executives

- (a) Upon a Party's receipt of a Notice of Dispute, the Dispute shall be escalated for amicable resolution by an executive of each Party (each a "**Party Executive**").
- (b) The selected Party Executive for each Party shall be:
 - (i) in a position of authority above that of the Party Representative; and
 - (ii) shall have or be delegated full authority to resolve the Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
- (c) The Party Executives shall promptly, and by no later than 15 Business Days (or such longer period agreed by the Parties in writing) from the date of the receiving Party's receipt of the applicable Notice of Dispute, meet and make reasonable and *bona fide* efforts to resolve the Dispute.
- (d) All discussions and negotiations held, and all communications exchanged, between the Parties in connection with the Party Executive negotiations shall be on a without prejudice basis to facilitate the resolution of the Dispute.
- (e) Either Party may terminate the process of amicable resolution by the Party Executives by providing Notice of termination of such process (each a "**Party Executive DRP Termination Notice**") at any time:
 - (i) if the initial Party Executive meeting does not occur by the expiry of the period set out in Section 2(c); or
 - (ii) 10 Business Days after the initial Party Executive meeting described in Section 2(c).
- (f) The requirements of this Section 2 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 8(a).

3. Combined Dispute Board

3.1 Appointment of the CDB

- (a) The Combined Dispute Board ("**CDB**") shall be a standing body composed of three members appointed in accordance with this Schedule 27 (each a "**Member**"). On or before Financial Close, the CDB shall be constituted by a written agreement between the Parties and each of the Members substantially in the form set out in

Appendix “B” to this Schedule 27 and executed and delivered in accordance with Schedule 2 – Completion Documents of the Project Agreement (each a “**CDB Member Agreement**”).

- (b) The CDB shall remain constituted until the CDB Expiry Date, provided that the CDB shall be reduced to one Member (the CDB Chair) following the Final Completion Date unless the Parties otherwise agree. The Parties may agree in writing to extend the term of the CDB, and shall agree in writing to any extensions necessary in order to obtain CDB decisions in relation to Disputes referred to that form of CDB (i.e. one member or three member) which remain outstanding upon the scheduled reduction of the number of CDB members or the end of the CDB term, as applicable.
- (c) Unless otherwise agreed by the Parties in writing:
 - (i) two Members shall have technical and/or senior managerial expertise relevant to the Project (each a “**Technical Member**”); and
 - (ii) the third Member, who shall be the chair of the CDB, shall have significant experience in construction law and shall be either: (A) a lawyer who is licensed to practice law in Ontario or another province of Canada other than Quebec; or (B) an ex-judge or master of a superior court in Ontario or another province of Canada other than Quebec providing adjudication, arbitration and/or mediation services in Ontario or another province of Canada (the “**CDB Chair**”).
- (d) Each Member shall be independent, impartial and, unless otherwise agreed by the Parties in writing, experienced in resolving and deciding disputes of a type, complexity and value commensurate with the potential Disputes that could be referred to the CDB.
- (e) Each Party shall appoint a Technical Member of its choice on or prior to Financial Close, and shall deliver to the other Party a CDB Member Statement for that Member upon appointment in accordance with Schedule 2 – Completion Documents of the Project Agreement.
- (f) The Parties shall jointly appoint the CDB Chair on or prior to Financial Close, and deliver a CDB Member Statement for the CDB Chair upon appointment in accordance with Schedule 2 – Completion Documents of the Project Agreement.
- (g) Before commencing CDB activities, each Member shall sign with the Parties a CDB Member Agreement. The CDB Member Agreement may be terminated in accordance with the CDB Member Agreement.

3.2 Replacement of a Member

- (a) When a Member must be replaced due to death, incapacity, resignation, termination or removal, a new Member shall be appointed within 30 days of the need for replacement arising, in the same manner as the Member being replaced was originally selected in accordance with this Schedule 27, unless otherwise agreed by the Parties in writing. All actions taken by the CDB prior to the replacement of a Member shall remain valid. When one Member is to be replaced, the other Members shall continue to be Members, but shall not hold hearings or issue CDB decisions without the agreement of the Parties in writing prior to the replacement of the Member.
- (b) If a Party fails to appoint a replacement Technical Member and the Parties cannot agree on an alternative Technical Member within the period of time set out in Section 3.2(a), either Party may refer the appointment of that Technical Member or the alternative Technical Member for a court determination pursuant to Section 5(b).
- (c) If the Parties are unable to appoint a replacement CDB Chair within the period of time set out in Section 3.2(a), either Party may refer the appointment of the replacement CDB Chair for a court determination pursuant to Section 5(b).

3.3 Impartiality of the Members and Security Clearance Check Requirements

- (a) Every prospective Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other Members, any facts or circumstances which might call into question the Member's independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective Member's impartiality, substantially in the form set out in Appendix "A" to this Schedule 27 (the "**CDB Member Statement**").
- (b) A Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the Member's impartiality or independence which may arise in the course of such Member's tenure.
- (c) Should any Party wish to challenge a prospective or current Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, as soon as practicable after learning of the facts upon which the challenge is based, submit to the CDB and the other Party a request for a decision upon the challenge including a written statement of such facts.
- (d) If the challenged prospective or current Member does not withdraw, and the other Party does not agree to the challenge, either Party may refer the matter for a court determination pursuant to Section 5(b).

Thunder Bay Correctional Complex Project

- (e) No Party shall challenge a current Member on the basis of an alleged lack of impartiality or independence as a result of the Member carrying out its duties under the CDB Member Agreement.
- (f) If a prospective or current Member is successfully challenged, the prospective Member shall not be appointed, or the current Member shall be removed forthwith from the CDB and the CDB Member Agreement, if any, between that Member and the Parties shall be automatically terminated.
- (g) Each prospective and current Member shall submit to Security Clearance Checks in accordance with Schedule 7 - Security Clearance Check Requirements. In the event that any of the events specified in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements have occurred in respect of a prospective or a current Member, Contracting Authority may, in its sole discretion, require that the prospective Member not be appointed or that the current Member be removed forthwith from the CDB and that the CDB Member Agreement between that Member and the Parties be terminated.

3.4 Ongoing Project Monitoring by the CDB

- (a) The Parties shall fully cooperate with the CDB and communicate information to it in a timely manner.
- (b) The Parties shall ensure that the CDB is kept informed of the performance of the Parties' obligations under the Project Agreement and of any Disputes arising in the course thereof by such means as reports or Notices issued by the Parties in respect of the Project Operations. In particular, the CDB shall receive copies of any and all:
 - (i) amendments to the Project Agreement and Variation Confirmations;
 - (ii) Notices of Dispute;
 - (iii) Works Reports;
 - (iv) Monthly Reports and Quarterly Reports (as such terms are defined in the Independent Certifier Agreement);
 - (v) Proceeding at Risk Notices;
 - (vi) Notices delivered to Project Co by Contracting Authority pursuant to Section 20.4(a)(iii) of the Project Agreement;
 - (vii) Notices of, and responses to Notices of, Delay Events, Compensation Events, Relief Events, Excusing Causes, and events of Force Majeure;
 - (viii) the Substantial Completion Certificate, the Final Completion Certificate, and the other Notices and documents provided by each of the Parties and

the Independent Certifier pursuant to Sections 24.4, 24.7, 24.8(d), 24.10(a), 24.11 and 24.12 of the Project Agreement;

- (ix) Performance Monitoring Reports and Payment Adjustment Reports;
- (x) Monthly Energy Reports and Energy Analysis Reports;
- (xi) documentation, information and analyses provided as part of each Payment Mechanism Technical Review carried out pursuant to Part D of Schedule 20 – Payment Mechanism of the Project Agreement;
- (xii) Annual Insurance Reports; and
- (xiii) such other Project documentation, Notices, and communications that either Party reasonably believes will assist to keep the CDB informed of the performance of the Project Agreement and of any Disputes arising in the course thereof,

at the same time they are delivered in accordance with the Project Agreement, from the Party that is delivering the document.

- (c) Each Party is required to copy the other Party in all written communications in respect of the Project it provides to a Member. Unless otherwise agreed by the Parties in writing or as provided in Section 3.10(d), no Party shall have any conversation or any meeting with any Member in respect of the Project without the other Party being included in such conversation or being present at such meeting.

3.5 CDB to Resolve Disputes

- (a) If the Parties are unable to resolve a Dispute other than a Schedule 27 Procedural Dispute prior to the CDB Expiry Date through amicable resolution by the Party Executives pursuant to Section 2 and a Party delivers a Party Executive DRP Termination Notice to the other Party, then either Party may in writing refer the Dispute to the CDB for resolution.

3.6 Statement of Case

- (a) The Party referring a Dispute to the CDB pursuant to Section 3.5(a) (the “**Claimant**”) shall submit a concise written statement of its case (the “**Statement of Case**”) to the responding Party (the “**Respondent**”) and the CDB within 30 days (or such longer period agreed by the Parties in writing, acting reasonably) of a Party’s referral of the Dispute to the CDB for resolution. The Statement of Case shall only include:
 - (i) the Notice of Dispute, including the Dispute Notice Supporting Documents;
 - (ii) the issues submitted to the CDB for decision;

- (iii) a statement of the Claimant’s position, including a statement of relevant facts and law; and
 - (iv) any amendments, updates, additions to, or deletions from the Notice of Dispute or the Dispute Notice Supporting Documents.
- (b) The date on which the Statement of Case is received by the CDB Chair shall be deemed to be the date of the commencement of the CDB proceeding (the “**Date of Commencement**”).
- (c) If the Claimant provides any material amendment, update, addition to, or deletion from the Notice of Dispute or the Dispute Notice Supporting Documents pursuant to Section 3.6(a)(iv), then the CDB shall permit the Respondent a reasonable amount of time to review and respond to such material amendment, update, addition to, or deletion from the Notice of Dispute or the Dispute Notice Supporting Documents, and shall extend the Reply Period accordingly pursuant to Section 3.7(b)(i).
- (d) Unless the CDB orders otherwise, the Claimant shall not be entitled to rely upon any documents other than the documents contained in its Statement of Case. In the event that the CDB permits the Claimant to rely on any additional documents, the CDB shall permit the Respondent a reasonable amount of time to review and respond to such additional documents.

3.7 Statement of Reply

- (a) Subject to Section 3.7(b), within 30 days of the Date of Commencement (the “**Reply Period**”), the Respondent shall deliver to the Claimant and the CDB a concise written statement of its reply to the Statement of Case (the “**Statement of Reply**”). The Statement of Reply shall only include:
- (i) a statement of the Respondent’s position, including a statement of relevant facts and law;
 - (ii) the issues submitted to the CDB for a decision; and
 - (iii) any documents not contained in the Statement of Case on which the Respondent intends to rely.
- (b) The Reply Period may be extended to permit the Respondent additional time to provide its Statement of Case by:
- (i) order of the CDB (including pursuant to Section 3.6(c) or Section 3.6(d)); or
 - (ii) agreement of the Parties, acting reasonably.

3.8 Additional Documents Required by the CDB

- (a) The CDB may at any time request a Party to submit additional written statements or documentation within a reasonable amount of time to assist the CDB in preparing its decision. Each such request shall be communicated in writing by the CDB to the Parties, and any additional written statements or documentation submitted in response to the CDB's request shall be submitted to the CDB and the other Party. The CDB shall permit the other Party a reasonable amount of time to review and respond to such additional written statements or documentation.

3.9 Evidence and Powers of the CDB

- (a) Subject to Section 3.9(b), the CDB shall decide Disputes based on the Parties' Statement of Case and Statement of Reply and any additional documents and responses delivered pursuant to any of Sections 3.6(c), 3.6(d) or 3.8(a).
- (b) If there are any material factual disputes between the Parties or other issues arising from the Parties' Statement of Case or Statement of Reply, the CDB may order such additional procedural steps or give such directions as the CDB considers appropriate to address such disputes or other issues, with a view to proportionality and the Parties' desire to resolve Disputes in a cost-effective and expeditious manner.
- (c) Without limiting Section 3.9(b), the CDB may, if necessary, appoint one or more experts after considering the positions of the Parties or, subject to Section 1.3(b), obtain and consider the opinion of the Independent Certifier, as an expert.

3.10 Hearings

- (a) The CDB shall order that a hearing in respect of the Dispute take place unless the Parties and CDB agree in writing that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference on written agreement of the Parties and the CDB.
- (c) The Parties shall appear through duly authorized representatives. In addition, the Parties may be assisted or represented by advisers and legal counsel.
- (d) If any Party refuses or fails to take part in the CDB hearing or in any preceding steps, the CDB may proceed notwithstanding such refusal or failure.
- (e) The CDB may request that the Parties provide and exchange summaries of their argument in advance of the hearing.
- (f) Subject to the discretion of the CDB, the hearing shall proceed as follows:
 - (i) the Claimant shall present its case;

- (ii) the Respondent shall present its case; and
- (iii) the Claimant shall have an opportunity to reply.

3.11 Basis for Decision

- (a) The CDB shall make decisions based on the Project Agreement and the law applicable to the Dispute.
- (b) The CDB may take into account:
 - (i) any failure of a Party to comply with the Project Agreement, including any of its mitigation obligations or its procedural obligations under this Schedule 27; and
 - (ii) any unreasonable delay of the Claimant in bringing its claim, including any unreasonable delay that prevented or prejudiced the Respondent's proper investigation of, opportunity for mitigation of, or ability to respond to the claim.
- (c) A decision of the CDB shall be in writing and state the findings, reasons, and determination of the CDB and include:
 - (i) a summary of the Dispute, the positions of the Parties and the decision requested; and
 - (ii) a summary of the relevant provisions of the Project Agreement and the relevant facts and law considered by the CDB.
- (d) The CDB shall issue its decision promptly and, in any event, within 30 days after the hearing unless the Parties consent in writing to an extension, which consent shall not be unreasonably withheld. Failure to issue a decision of the CDB within the time allowed does not invalidate the decision.
- (e) The CDB shall make its decision by a majority of the Members. Any Member who disagrees with the decision shall give the reasons for such disagreement in a separate written document that shall form part of the decision but which shall not be binding on the Parties.

3.12 Costs

- (a) All Member fees and expenses and any other costs associated with the establishment and activities of the CDB (including in relation to obtaining CDB decisions and the cost of any experts appointed pursuant to Section 4.9(c)) shall be shared equally and paid by the Parties in accordance with each CDB Member Agreement, unless otherwise agreed by the Parties in writing or ordered by the CDB.

- (b) Each Party shall bear its own costs associated with Disputes referred to the CDB for a decision.

3.13 Subsequent Dispute Resolution Procedure to the CDB

- (a) Any Party that is dissatisfied with a decision of the CDB other than a decision on a Schedule 27 Procedural Dispute may, within 30 days of the release of the CDB's decision (or such longer period agreed by the Parties, acting reasonably) (the "**Arbitration Referral Period**"), deliver a Notice of Request to Arbitrate the Dispute pursuant to Section 4(d). The decision of the CDB shall be stayed during the Arbitration Referral Period. If the Dispute is arbitrated pursuant to Section 4, the arbitration tribunal shall conduct the arbitration *de novo* and the decision of the CDB shall not, subject to the following sentence, be binding on the Parties. If neither Party delivers a Notice of Request to Arbitrate the Dispute pursuant to Section 4(d) before the expiry of the Arbitration Referral Period, or if any arbitration that is commenced pursuant to Section 4 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 4, then the decision of the CDB shall be final and binding on the Parties.
- (b) The Parties agree that any decision of the CDB that becomes final and binding on the Parties in accordance with Section 3.13(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the CDB.

4. Arbitration

- (a) Prior to the CDB Expiry Date, if the Parties fail to resolve a Dispute through the processes set out in Sections 2 and 3 (if and as applicable) and where no final and binding CDB decision exists in respect of the Dispute, then, subject to Section 1.2(c), the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 4.
- (b) On and following the CDB Expiry Date, if the Parties fail to resolve the Dispute through the process set out in Section 2 and where no final and binding CDB decision exists in respect of the Dispute, then, subject to Section 1.2(c), the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 4.
- (c) At any time during the Project Term, if either Party delivers a notice to the other Party pursuant to Section 1.2(c), then such Dispute shall be resolved by arbitration in accordance with this Section 4, and pursuant to an expedited process and timetable to be agreed to by the Parties in writing, or as ordered by the arbitral tribunal with regard to the prevailing circumstances.
- (d) Either Party may deliver a Notice of request to arbitrate a Dispute eligible to be referred to arbitration in accordance with this Schedule 27 (each a "**Notice of Request to Arbitrate**").

- (e) A Notice of Request to Arbitrate will not be effective unless it:
 - (i) is signed by the Party Representative;
 - (ii) if applicable, is delivered to the other Party Representative within the period of time set out in Section 3.13(a) following the release of any applicable CDB decision;
 - (iii) indicates it is a Notice of Request to Arbitrate pursuant to Section 4(d); and
 - (iv) expressly identifies the Dispute to be arbitrated.
- (f) The *Arbitration Act, 1991* shall apply to an arbitration pursuant to this Section 4.
- (g) A Dispute referred to arbitration shall be resolved by a single arbitrator unless:
 - (i) the Parties otherwise agree in writing; or
 - (ii) one of the Parties, by Notice delivered to the other Party within seven days after delivery of a Notice of Request to Arbitrate, requires the Dispute to be resolved by a three person arbitral tribunal, in which case the Dispute shall be resolved by a three person arbitral tribunal.
- (h) If the arbitral tribunal is comprised of a single arbitrator:
 - (i) the Parties shall jointly appoint the arbitrator; and
 - (ii) if the Parties are unable to agree on the arbitrator within 30 days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the arbitrator pursuant to the *Arbitration Act, 1991*.
- (i) If the arbitral tribunal is comprised of three arbitrators:
 - (i) each Party shall appoint one arbitrator and the first two arbitrators shall jointly appoint the third arbitrator, who shall act as the chair; and
 - (ii) if the Parties have not appointed an arbitrator or arbitrators pursuant to Section 4(i)(i) or if the Parties or the arbitrators are unable to agree on the third arbitrator within 30 days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the remaining arbitrator(s) pursuant to the *Arbitration Act, 1991*.
- (j) All arbitrators must have qualifications and experience relevant to the issues in the Dispute commensurate with the nature, complexity and value of the Dispute to be arbitrated.

- (k) No one shall be nominated or appointed to act as an arbitrator who is or was within the past five years in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the Dispute.
- (l) Unless otherwise agreed by the Parties, the seat and venue of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- (m) The arbitral tribunal shall render its award as soon as possible and no later than 60 days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitral tribunal.
- (n) The costs of the arbitration are within the discretion of the arbitral tribunal. In exercising discretion to award costs, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- (o) The award of the arbitral tribunal shall be final and binding upon the Parties and not subject to appeal.

5. Litigation

- (a) If necessary to prevent irreparable harm to a Party, including in connection with a Public Safety Dispute, nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction.
- (b) Either Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of the challenged or a proposed alternative Member or arbitrator.
- (c) All litigation permitted pursuant this Schedule 27 shall be resolved in the Ontario Superior Court of Justice. Both Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Disputes or matters which arise under the Project Agreement or in connection with the Project and which are to be resolved by litigation.

6. Stay and Consolidation with Third Party Disputes

- (a) Subject to Section 6(c), if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third

Party Arbitration(s) but only if each of Contracting Authority, Project Co, and the other parties all agree in writing.

- (b) Subject to Section 6(c), if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
 - (i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (ii) the other Party is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of the Third Party Litigation.

- (c) Sections 6(a) and 6(b) only apply:
 - (i) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
 - (ii) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

7. Confidentiality

- (a) Unless otherwise agreed by the Parties in writing or required by law, no Party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as confidential and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:
 - (i) on a without prejudice basis, including through the process for the amicable resolution of the Dispute by the Party Executives set out in Section 2; or

- (ii) through the decision process by any Party or the CDB or any Member, except for a decision and reasons of the CDB, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s).
- (b) Any Member or arbitrator appointed pursuant this Schedule 27 shall keep all information about any Dispute(s) referred to the CDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
- (c) Any arbitrator shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a Party in connection with an arbitration shall not be disclosed to any person or used for any other purpose, in accordance with this Section 7, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) A Member of the CDB or arbitrator shall not be compelled to give evidence in any proceeding in respect of a Dispute that was referred to the CDB or arbitrator for a decision.

8. Miscellaneous

- (a) The Parties can, by written agreement on a Dispute by Dispute basis:
 - (i) extend any or all timelines set out in this Schedule 27;
 - (ii) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 1.7, 2 and 3 (to the extent permitted by law) and, instead, proceed directly to resolution of the Dispute by arbitration pursuant to Section 4;
 - (iii) agree to a different process for arbitration than the one contemplated in this Schedule 27; or
 - (iv) agree to refer any Dispute to mediation by a neutral third party mediator.

APPENDIX “A”

FORM OF CDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,
IMPARTIALITY AND INDEPENDENCE

- TO:** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (“Contracting Authority”)
- AND TO:** MINISTRY OF THE SOLICITOR GENERAL
- AND TO:** ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP, a general partnership formed under the laws of Ontario (“Project Co”)
- RE:** Project agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the 22nd day of April, 2022 between Contracting Authority and (“Project Co”) in respect of the Thunder Bay correctional complex project
-

1. GENERAL

1.1 Name and Position

- (a) **Family Name(s):**
- (b) **Given Name(s):**
- (c) **Member Position (circle one):** **Technical** **Chair**
- (d) Please attach a current copy of your CV.

1.2 Definitions, Interpretation and Governing Law

- (a) This statement (the “**Statement**”) shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement, and governed by the laws of Ontario, without regard to conflict of laws provisions. Please initial below all relevant statements.

1.3 Acceptance

- (a) I accept to serve as a Member in accordance with the Project Agreement.

Thunder Bay Correctional Complex Project

Initial: _____

- (b) I decline to serve as a Member in accordance with the Project Agreement. *(If you tick here, simply date and sign the form without completing any other sections).*

Initial: _____

1.4 Availability

- (a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of Schedule 27 – Dispute Resolution Procedure to the Project Agreement and can devote the time necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

Initial: _____

- (b) I understand that it is important to discharge the duties of a Member set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

Initial: _____

Number of currently pending matters or roles in which I am involved (*i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet*):

	As tribunal or dispute board chair / sole arbitrator / sole DB member	As co-arbitrator / co-dispute board member	As counsel	As other
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				
Court litigation (e.g. international commercial courts)				

Thunder Bay Correctional Complex Project

Other (attach separate sheet if necessary)				
--	--	--	--	--

I have attached a calendar showing for the next 24 months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a Member and which may materially affect my ability to discharge my duties as a Member.

Initial: _____

1.5 Independence and Impartiality

- (a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

- (i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

Initial: _____

- (ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

Initial: _____

- (b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities, but shall immediately disclose in writing to the Parties and the other Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a Member.

Initial: _____

- (c) In accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Party does not agree to the challenge, I understand that the challenge shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

Initial: _____

- (d) In the event that I am successfully challenged, I understand that I will be removed from the CDB forthwith and that my CDB Member Agreement shall be terminated.

Initial: _____

1.6 Security Clearance Checks / Security and Background Checks

- (a) I shall submit to security and background checks in accordance with Schedule 7 – Security Clearance Check Requirements to the Project Agreement, and understand that if any of the events described in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred that

Contracting Authority may, in its sole discretion, remove me from the CDB forthwith and terminate my CDB Member Agreement.

- (b) I shall immediately disclose in writing to the Parties and the other Members if any of the events described in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred.

Initial: _____

1.7 Delivery

- (a) This Statement may be delivered by sending a fully executed copy by electronic mail or other electronic transmission to the Parties, and such delivery shall be as effective as the manual delivery of this executed Statement.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Date:

Signature:

APPENDIX “B”

FORM OF CDB MEMBER AGREEMENT

This CDB Member Agreement (the “**Agreement**”) is entered into between:

- (a) **CDB Member:** *[Note: Full name and title (sole Member, Technical Member or CDB Chair)]* (the “**Member**”);
- (b) **Party 1:** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”); and
- (c) **Party 2:** EllisDon Infrastructure TBCC General Partnership, a general partnership formed under the laws of Ontario (“**Project Co**”)

(collectively, the “**Undersigned Parties**”).

WHEREAS:

- A. Contracting Authority and Project Co have entered into an agreement dated April 22, 2022 (the “**Project Agreement**”) for the Thunder Bay correctional complex project (the “**Project**”);
- B. Schedule 27 – Dispute Resolution Procedure of the Project Agreement provides for the appointment of a Combined Dispute Board (the “**CDB**”), and that the CDB shall, *inter alia*, issue decisions and perform other tasks in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement (the “**CDB Services**”);
- C. Certain Disputes may be referred to the CDB for determination in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement; and
- D. The undersigned individual has been appointed to serve on the CDB as a Member.

The Member and the Parties therefore agree as follows:

1.1 Definitions and Interpretation

- (a) This Agreement shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement and defined terms shall have the same meaning as in the Project Agreement, unless otherwise specified here.
- (b) If there is any conflict between this Agreement and Schedule 27 – Dispute Resolution Procedure to the Project Agreement, this Agreement will take precedence to the extent of the conflict.

Thunder Bay Correctional Complex Project

1.2 Undertaking

- (a) The Member shall act as **[a Technical Member / the CDB Chair]** and hereby agrees to perform the duties of a Member and provide the CDB Services in accordance with the terms of the Project Agreement and the terms of this Agreement.
- (b) The Member confirms that he or she is and shall remain impartial and independent of the Parties.
- (c) The Member further confirms that he or she has executed and will comply with the terms of the CDB Member Statement.

1.3 Composition of the CDB and Contact Details

- (a) Subject to Section 3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the CDB shall be composed of three independent and impartial Members.
- (b) The Member can be contacted as follows:

Member: *[Note: Include name, address, telephone, email and any other contact details]*

- (c) The **[CDB Chair]** (if applicable) is listed below and can be contacted as follows:

CDB Chair: *[Note: Include name, address, telephone, email and any other contact details]*

- (d) The **[other Technical Member]** (if applicable) is listed below and can be contacted as follows:

Technical Member: *[Note: Include name, address, telephone, email and any other contact details]*

- (e) The Parties to the Project Agreement are those indicated above with the following contact details:
 - (i) **Party 1:** *[Note: Include contact information]*
 - (ii) **Party 2:** *[Note: Include contact information]*
- (f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

1.4 Qualifications

- (a) The Parties recognise that the Member is a **[●]**, in accordance with Section 3.1(c) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

Thunder Bay Correctional Complex Project

- (b) The Parties recognise that the Member is independent, impartial and skilled in resolving and deciding disputes of a type, complexity and value commensurate with the Dispute(s) likely to be referred to the CDB, in accordance with Section 3.1(d) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

1.5 Fees and Disbursements

- (a) In consideration of the Member performing the CDB activities in accordance with this Agreement and Schedule 27 – Dispute Resolution Procedure of the Project Agreement, the Member shall be entitled to be paid the initial fee (the “**Initial Fee**”) and the ad-hoc hourly fee (the “**Ad-hoc Hourly Fee**”) described in this Section 1.5.
- (b) The Initial Fee shall be a lump sum amount equal to CAD \$[REDACTED], and shall be reflected in the first invoice of the Member provided pursuant to Section 1.6(a).
- (c) The Initial Fee shall cover:
 - (i) reviewing and becoming and remaining familiar with the Project Agreement, including without limitation, Schedule 15 – Output Specifications to the Project Agreement and Schedule 27 – Dispute Resolution Procedure to the Project Agreement;
 - (ii) reviewing any amendments to the Project Agreement and Variation Confirmations;
 - (iii) reviewing progress reports, correspondence from the Parties, and other documents which the CDB is required to review pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement;
 - (iv) reviewing specific documents which the CDB requests for its review;
 - (v) attending internal CDB meetings;
 - (vi) managing and coordinating the operation of the CDB; and
 - (vii) any overhead and office expenses.
- (d) The Member’s Ad-hoc Hourly Fee shall be [CAD \$[●] per hour], and shall be billed in hourly increments for certain work performed. The Ad-hoc Hourly Fee shall cover any work carried out in connection with referrals for a CDB decision, including preparation, attendance at hearings, review of the Parties’ submissions, delivery of the CDB decision, and revisions to same.
- (e) Any non-productive ad-hoc travel shall be reimbursed at half the hourly rate of the Member’s Ad-hoc Hourly Fee.
- (f) Reasonable Member expenses and disbursements relating to (i) flights (at economy class rates), (ii) hotel (to a maximum of CAD\$[REDACTED] per night), and (iii) the cost of

retaining any experts shall be reimbursed at cost, with the prior approval of the Parties. All other costs and disbursements are and shall be deemed to be included in the Initial Fee and the Ad-hoc Hourly Fee. The Member shall retain all receipts and proof of payment of claimed disbursements and expenses, and shall provide them to the Parties or either Party upon request. The Parties shall have no obligation to reimburse the Member if the Member fails to produce receipts and proof of payment upon request.

1.6 Payment of Fees and Expenses

- (a) Unless otherwise agreed by the Parties and the Member in writing, all fees, expenses and disbursements payable under this Agreement shall be invoiced by the Member to the Parties on a monthly basis, which invoice shall reflect the performance of the CDB activities performed in the pervious month and be in form and substance reasonably satisfactory to the Parties.
- (b) Project Co and Contracting Authority shall each pay one half of such fees, expenses and disbursements to the Member. While each Party is responsible for paying one half of the Member's fees, expenses and disbursements, this obligation is several and not joint. If one Party fails to make payment, the other Party may make payment of the amounts owed by the non-paying Party and recover the costs of doing so from the non-paying Party, but has no obligation to do so.
- (c) All payments to the Member shall be made to the following account: **[name of bank, account number, SWIFT code, etc.]**.
- (d) All payments to the Member under this Agreement shall be payable by the Parties monthly in arrears, and by no later than the date that is 30 days of the receipt by the Parties of an invoice provided by the Member in accordance with this Agreement.

1.7 Duration and Termination of the Agreement

- (a) Subject to Section 3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member agrees to serve for the duration of the CDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate this Agreement.
- (c) The Member may terminate this Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the Member in writing.
- (d) If the Member is successfully challenged in accordance with Section 3.3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member shall be removed forthwith from the CDB and this Agreement shall be terminated.

Thunder Bay Correctional Complex Project

- (e) Contracting Authority may, in its sole discretion, remove the Member forthwith from the CDB and terminate this Agreement if any of the events specified in Sections 2(i)(iii) through and including (vi) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred in respect of the Member.
- (f) The Member shall be entitled to claim payment for work performed to the date of termination of this Agreement in accordance with this Agreement, but shall not be entitled to claim any further payment.

1.8 Indemnity

- (a) The Parties shall jointly and severally indemnify and hold harmless the Member from any claims of third parties for anything done or omitted to be done in the discharge of the Member's activities under this Agreement.
- (b) The indemnity provided in Section 1.8(a) shall not extend to:
 - (i) any act or omission of the Member that is shown to have been in bad faith;
 - (ii) any breach of this Agreement by the Member,
 - (iii) any negligent or unlawful act or omission or willful misconduct of the Member;
 - (iv) any action taken by the Member outside the scope of authority set forth in this Agreement; or
 - (v) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Member.
- (c) The indemnity provided in Section 1.8(a) shall survive the termination of this Agreement.

1.9 Confidentiality

- (a) The Member and all of the member's affiliates, employees, servants and agents shall keep all information about the Project, the Member's involvement on the Project, any CDB Services performed by the CDB, and any Dispute(s) referred for a CDB decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the CDB decision process by any other Party or the CDB or any Member, except as set out in Section 7(a)(ii) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

Thunder Bay Correctional Complex Project

- (c) Material delivered by a Party in connection with a CDB decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance of the CDB Services, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) The Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 49 of the Project Agreement.
- (e) The Parties may at any time require the Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the Member must promptly arrange for such agreements to be made.

1.10 Disputes and Applicable Law

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 5(b) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties in writing or appointed in accordance with the *Arbitration Act, 1991*. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

1.11 Counterparts

- (a) This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

[Remainder of page intentionally left blank]

This Agreement is entered into on **[specify date]** at **[specify place]**.

[signature]

Member

[signature]

Project Co

[signature]

Contracting Authority

SCHEDULE 28

REFINANCING

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) any dividend or other distribution in respect of the Equity Capital;
 - (ii) any reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
 - (iii) any principal, interest, makewhole or other amounts paid on any loans included in the Equity Capital;
 - (iv) any payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was either not in the ordinary course of business or not on reasonable commercial terms; or
 - (v) any other benefit which is either not received in the ordinary course of business or not on reasonable commercial terms,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.

- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) any Refinancing that has the effect of replacing or extending any Mini-Perm Financing, provided that Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly Service Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as at Financial Close for the Refinancing of any Mini-Perm Financing;
 - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;

- (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
 - (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
 - (v) any Qualifying Bank Transaction;
 - (vi) any Rescue Refinancing;
 - (vii) any Refinancing that was approved by Contracting Authority prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
 - (viii) any amendment, variation or supplement of any Lending Agreement approved by Contracting Authority as part of any Variation under this Project Agreement; or
 - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(c)(i).
- (e) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing.
- (f) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that, in each case, controls, either directly or through its affiliates, funds in excess of \$[REDACTED],
- provided such institution is not a Restricted Person.
- (g) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;

- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (h) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (i) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) entering into any new Lending Agreement;
 - (iii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iv) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (v) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (j) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Contracting Authority, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of this Project Agreement;
 - (iii) the performance of the Project Operations to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.

- (k) “**Refinancing Gain**” means an amount equal to the greater of zero and $(A - B)$, where:

A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.

B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.

- (l) “**Refinancing Notice**” has the meaning given in Section 2.9.
- (m) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Contracting Authority, whether actual or potential.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Contracting Authority, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a notice of such Refinancing to Contracting Authority at least ten Business Days before such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Senior Debt Amount and/or Junior Debt Amount.

2.2 Contracting Authority may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;

Thunder Bay Correctional Complex Project

- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Contracting Authority, whether actual or contingent, present or future, known or unknown.

2.3 Contracting Authority shall be entitled to receive:

- (a) a [REDACTED] % share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED] % share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of [REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED] % share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide Contracting Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Contracting Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from Contracting Authority, provide any information in relation to a proposed Refinancing as Contracting Authority may reasonably require. Project Co shall keep Contracting Authority informed as to any changes to the terms of the Refinancing. Both Contracting Authority and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6, Contracting Authority shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
- (b) a reduction in the Monthly Service Payments over the remaining Project Term,

- such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal Contracting Authority's share of the Refinancing Gain.
- 2.6 Contracting Authority and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of Contracting Authority's share of the Refinancing Gain (taking into account how Contracting Authority has elected to receive its share of the Refinancing Gain under Section 2.5 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Contracting Authority's share, the Dispute shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.
- 2.7 Both Contracting Authority and Project Co shall work collaboratively to establish the rate setting process required to complete the Qualifying Refinancing. The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse Contracting Authority for all such reasonable out-of-pocket costs incurred by Contracting Authority. Project Co and Contracting Authority shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee or similar amount that is incurred by either Party in relation to a Refinancing outside of the ordinary course of business.
- 2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then Contracting Authority may at any time request that Project Co provide to Contracting Authority full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the “**Refinancing Information**”). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, Contracting Authority must request Project Co to provide the Refinancing Information before Contracting Authority can issue a Refinancing Notice pursuant to Section 2.9. If Contracting Authority and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then Contracting Authority may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If Contracting Authority considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, Contracting Authority may, by notice in writing to Project Co (a “**Refinancing Notice**”), require Project Co to request potential funders to provide terms for a potential Refinancing.
- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which Contracting Authority believes such funding terms to be available. Project Co and Contracting Authority shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. Contracting Authority shall be

entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.

2.11 If Contracting Authority serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
- (b) use all reasonable endeavours to obtain the most favourable available terms from existing Lenders and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve). For the avoidance of doubt but subject to the previous proviso, “most favourable” available terms are those which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
- (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to Contracting Authority (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of Contracting Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
 - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of Contracting Authority for such belief and evidence to the reasonable satisfaction of Contracting Authority that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.

If Contracting Authority reasonably considers that the requirements of Section 2.11(c) have not been satisfied, Contracting Authority may require Project Co to satisfy its obligations under Section 2.11(c).

2.12 Following satisfaction by Project Co of its obligations under Section 2.11(c)(i) and receipt of the information referred to in Section 2.11(c)(i), Contracting Authority shall, acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or

- (b) instruct Project Co to discontinue the proposed Refinancing.

If Project Co must, at a future date, undertake a Mandatory Refinancing, Contracting Authority shall not instruct Project Co to implement the proposed Refinancing unless both Contracting Authority and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If Contracting Authority instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) Contracting Authority instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied

then, Contracting Authority shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by Contracting Authority within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of Contracting Authority that such costs have been incurred in place of professional costs which would in the ordinary course of business have been paid to third parties and (ii) Contracting Authority has, by prior written agreement, approved the use of such internal management resource.

2.15 Contracting Authority shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

SCHEDULE 29

CONTRACTOR SITE SPECIFIC SAFETY MANUAL REQUIREMENTS

1. General Requirements

The Contractor Site Specific Safety Manual shall, at a minimum, comply in all respects with:

- a) all applicable requirements of the *Occupational Health and Safety Act* (Ontario);
- b) industry best practices;
- c) health and safety requirements set by Project Co with respect to the Project and the Site, and
- d) health and safety requirements of the Project Agreement.

2. Minimum Categories

The Contractor Site Specific Safety Manual shall, at a minimum, contain narrative addressing the categories and sub-categories as set out below.

1.0	Overview and Scope The manual shall have an introduction that shall set out an overview and scope of the Project.
2.0	Health and Safety Statement A statement that shall refer to the safety goals of the project and the culture of safety planned to be implemented by the Construction Contractor.
2.1	Statement of Commitment by an Officer: A statement that shall specifically refer to the manual itself and be executed by an officer of the Construction Contractor with authority to bind the Construction Contractor.
2.2	Project Company Mandate and OHS Policy.
2.3	Statement of Commitment Regarding keeping Subcontractors Responsible.
2.4	Site Plot Plan: which include an illustration.
3.0	Project Health and Safety Objectives and Performance Measurement Description of methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met.
4.0	Roles and Responsibilities Description of the specific roles and responsibilities of the following individuals/entities in relation to meeting the health and safety objectives:
4.1	Project Co
4.2	Project Director
4.3	Safety Manager
4.4	Construction Manager
4.5	Safety Coordinator
4.6	Joint Occupational Health and Safety Committee/Trades Committee
4.7	Subcontractor
4.8	Subcontractor Supervisor
4.9	Workers
4.11	Visitors
4.12	External Parties
4.13	Contact Sheet

Thunder Bay Correctional Complex Project

5.0	Sub-contractor Health and Safety Management Plan
6.0	Health and Safety Training & Competency Description of the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained.
6.1	Site Specific Orientation
6.2	Project Specific Orientation
6.3	Worker Training to Specific Site Hazards
6.4	Visitor/Short Duration Work Orientation
6.5	Personal Protective Equipment: Identify the minimum PPE that will be required on-site.
6.6	Delivery Driver/Supplier Orientation
6.7	Worker/ Supervisor Competency and Evaluation: Describe how competency of workers and supervisors will be identified, met and evaluated on an on-going basis.
7.0	Meetings and Communication Plan Description of frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.
8.0	Emergency Response Plan Description of measures to respond to injuries and accidents.
8.1	Emergency Contacts and Roles
8.2	Emergency Evacuation Plan
8.3	Emergency Response Procedure
8.4	Property, Equipment and Environmental Damage Procedure
8.5	First Aid
8.6	Drills and Exercises
9.0	Inspections and Audits Description of the Construction Contractor’s strategy for implementing an inspection regime in relation to health and safety on the Site.
9.1	Informal Inspections
9.2	Formal Inspections
9.3	Audits
9.4	Inspection and Audit Schedule
9.5	Inspection Follow-up/Corrections Action Plan
9.6	Maintenance of Records
10.0	Incident Reporting and Investigations Procedure Description of the procedure for reporting incidents, proactive investigations intended to prevent future incidents and measures to resolve the incident.
11.0	Rules of Conduct and Disciplinary Actions Description of disciplinary actions to be taken in the case of health and safety infractions.
11.1	Drugs and Alcohol
11.2	Workplace Violence and Harassment
11.3	Disciplinary Action
11.4	Workers’ Rights
12.0	Security Plan Provide a plan that details guidelines for implementing safety on the Site.
12.1	Methodology for Securing the Site and Restricting Trespassers

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Thunder Bay Correctional Complex Project

13.0	Hazard Identification and Control
13.1	Hazard Identification and Control
13.2	Designated Substances
13.3	Task Safety Analysis
13.4	Job Hazard Analysis: Analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. It focuses on the relationship between the worker, the task, the tools, and the work environment. It breaks down the job in smaller steps to examine potential hazards and potential preventative steps.
13.5	Project Specific Health and Safety Requirements: Provide a project-specific health and safety risk register which details any unique safety requirements of the Project.
14.0	Traffic Management and Control Plan
15.0	Others

SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 22 day of April, 2022

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c.9, Schedule 32, as amended

(“**Contracting Authority**”)

AND:

[REDACTED]

(the “**Lenders’ Agent**”)

AND:

ELLISDON INFRASTRUCTURE TBCC GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Account Trustee**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Contracting Authority, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Contracting Authority, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) “**Bank**” means [REDACTED].
- (c) “**Bond**” means the performance plus bond provided by a Permitted Surety (as defined in the Construction Contract) in favour of Project Co pursuant to the terms of the Construction Contract and in the form attached as Exhibit 5 to the Construction Contract.
- (d) “**Business Day**” has the meaning given in the Project Agreement.
- (e) “**Change of Authorization Event**” has the meaning given in Section 7(a).
- (f) “**Change of Authorization Notice**” has the meaning given in Section 7(b)(ii).
- (g) “**Contracting Authority**” has the meaning given in the preamble.
- (h) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (i) “**Default Period**” means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) “**Equipment**” has the meaning given in the Project Agreement.
- (k) “**Facility**” has the meaning given in the Project Agreement.
- (l) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (m) “**Insurance Policies**” has the meaning given in Section 4(a).
- (n) “**Insurance Proceeds**” has the meaning given in Section 4(b).
- (o) “**Insurance Trust Account**” means [REDACTED].
- (p) “**Insurance Trust Agreement**” means this insurance trust agreement.

Thunder Bay Correctional Complex Project

- (q) “**Lenders**” has the meaning given in the Project Agreement.
- (r) “**Lenders’ Agent**” has the meaning given in the preamble.
- (s) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between Contracting Authority, Project Co and the Lenders’ Agent.
- (t) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (u) “**Multiple Obligee**” means a multiple obligee under the Bond.
- (v) “**Multiple Obligee Rider**” means the multiple obligee rider applicable to the Bond pursuant to which Project Co, the Lenders’ Agent and Contracting Authority are multiple obligees under the Bond.
- (w) “**Order**” has the meaning given in Section 6(k).
- (x) “**Party**” means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (y) “**Performance Bond**” means the performance component of the Bond, and for clarity shall not include the liquid component of such Bond.
- (z) “**Project**” has the meaning given in the Project Agreement.
- (aa) “**Project Agreement**” means the project agreement between Contracting Authority and Project Co dated on the same date as this Insurance Trust Agreement.
- (bb) “**Project Co**” has the meaning given in the preamble.
- (cc) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (dd) “**Project Operations**” has the meaning given in the Project Agreement.
- (ee) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Bond, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into

Thunder Bay Correctional Complex Project

- consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
 - (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
 - (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
 - (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
 - (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
 - (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
 - (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
 - (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of

Thunder Bay Correctional Complex Project

days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. BOND AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Bond, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Bond and the Insurance Trust Account and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Performance Bond, the Insurance Trust Account and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.
- (b) The Account Trustee shall not release the Bond or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, Contracting Authority, and Project Co agree that, (x) if Project Co or the Lenders’ Agent receives the Performance Bond, then the Bond will be enforced for the purpose of completion of the Project, and (y) if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or

- (iii) indemnification for any Contracting Authority, SolGen or other Province Person loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority, SolGen or any other Province Person are entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority, SolGen or other Province Person, as the case may be, such related insurance proceeds are to be paid directly to Contracting Authority, SolGen or the applicable Province Person, as the case may be, by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii). For greater certainty, it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. DELIVERY OF BOND AND INSURANCE

- (a) Project Co shall deliver, or cause to be delivered, the Bond to the Account Trustee. Project Co is required to obtain under the Project Agreement certified copies or originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Bond and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

4A. BONDS

- (a) If the Account Trustee and Contracting Authority have received a Default Notice, and if Lenders’ Agent presents to the Account Trustee (and the other Parties to this Insurance Trust Agreement) a declaration that it or any person Lenders’ Agent designates requires possession of the Bond for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and, solely with respect to the Performance Bond, the Account Trustee has received written authorization from Contracting Authority confirming Lenders’ Agent’s right to receive the Performance Bond, the Account Trustee shall provide the Bond to Lenders’ Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the Bond to Lenders’ Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and Contracting Authority presents to the Account Trustee a declaration that it or any person designated by it requires possession of the Performance Bond for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to Contracting Authority or such designated party, without the need for further investigation or inquiry by the Account Trustee that Contracting Authority or the

designated party presenting the declaration is entitled to receive the Performance Bond. Contracting Authority shall provide, no later than five (5) Business Days following receipt by Contracting Authority of a request by the Lenders' Agent, either: (i) the written authorization referred to in this Section 4A(a); or (ii) written justification detailing Contracting Authority's rationale for refusing to provide such authorization.

- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Performance Bond to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Performance Bond.
- (c) Contracting Authority, Lenders' Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lenders' Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lenders' Direct Agreement and this Insurance Trust Agreement, the provisions of the Lenders' Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

4B. INSURANCE PROCEEDS

- (a) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or Contracting Authority (the "**Insurance Proceeds**") as follows:
 - (i) subject to Section 4B(b), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to

time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as Contracting Authority may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (b) All losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried by Project Co prior to Substantial Completion; (ii) property insurance carried by Project Co after Substantial Completion; and (iii) the boiler and machinery insurance carried by Project Co after Substantial Completion, which in each case relate to Equipment purchased, owned or leased by Contracting Authority, SolGen or other Province Person shall be payable solely to Contracting Authority, SolGen or the applicable other Province Person, as applicable, and shall not be payable to the Account Trustee or distributed pursuant to this Insurance Trust Agreement.
- (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4B(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
- (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Contracting Authority, may at any time or from time to time direct in writing.

5. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to Contracting Authority all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Contracting Authority may from time to time request in writing.

6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Contracting Authority or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Contracting Authority or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or

performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services

Thunder Bay Correctional Complex Project

hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).

- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Contracting Authority for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, Contracting Authority and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, Contracting Authority, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or

Thunder Bay Correctional Complex Project

where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Contracting Authority shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Contracting Authority.
- (o) Each of the Lenders' Agent and Contracting Authority shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Contracting Authority which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by electronic transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to Section 6(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and Contracting Authority, or any shorter period of time as agreed to by Project Co and Contracting Authority, notwithstanding the provisions of Section 6(a), provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance, provided that such disclosure does not constitute "tipping off" or is otherwise prohibited

by law; and (ii) if such circumstances are rectified to the Account Trustee’s satisfaction within such 10 day period, then such resignation shall not be effective.

7. LENDERS’ AGENT AND CONTRACTING AUTHORITY RIGHTS TO DIRECT

- (a) Until the termination of the Project Agreement in accordance with the Lenders’ Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by Contracting Authority (a “**Change of Authorization Event**”), the Lenders’ Agent shall, subject to Sections 3 and 4, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Bond, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders’ Agent shall cease to be entitled, and Contracting Authority shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Bond, the Insurance Policies and the Insurance Proceeds; and
- (ii) the Lenders’ Agent and Contracting Authority shall jointly provide notice to the Account Trustee (a “**Change of Authorization Notice**”) that Contracting Authority shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Bond, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an Contracting Authority Event of Default has occurred. Where an Contracting Authority Event of Default has occurred, upon receipt by the Lenders’ Agent and Lenders of all amounts owing by Contracting Authority to the Lenders’ Agent and Lenders under the Lenders’ Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. TERMINATION

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders’ Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
- (ii) the obligations of Project Co to Contracting Authority have been paid and performed in full.

Thunder Bay Correctional Complex Project

(b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender’s Agent, Contracting Authority, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory the Lenders’ Agent, the Lenders and Contracting Authority.

9. ASSIGNMENT

(a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders’ Agent, Contracting Authority and Project Co.

10. NOTICES

(a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority: [REDACTED]
c/o Ontario Infrastructure
and Lands Corporation:

With a copy to:
[REDACTED]

If to the Lenders’ Agent: [REDACTED]

If to Project Co: [REDACTED]

With a copy to:
[REDACTED]

If to Account Trustee: [REDACTED]

With a copy to:

[REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 10.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

11. AMENDMENTS

This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating

on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance Trust 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, except as provided in this Insurance Trust Agreement, of principal and agent.

14. ENTIRE AGREEMENT

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust 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 Insurance Trust Agreement.

15. SEVERABILITY

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

16. ENUREMENT

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

17. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario) hereby irrevocably attorn to the exclusive jurisdiction of such courts.

18. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 18.

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

21. COUNTERPARTS

This Insurance Trust 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 shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

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IN WITNESS WHEREOF the Parties have executed this Insurance Trust Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister of
Government and Consumer Services, as
represented by Ontario Infrastructure and
Lands Corporation**

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE TBCC
GENERAL PARTNERSHIP,**

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

SCHEDULE 32

FINANCIAL MODEL EXTRACTS

[REDACTED]

SCHEDULE 33

[INTENTIONALLY DELETED]

SCHEDULE 34

WORKS REPORT REQUIREMENTS

1. The Works Report shall include the following:
 - (a) a cover page including the title “Works Report”, the Project title, date of the report, issuance date, version date, and the version number of the relevant Works Schedule, an applicable Recovery Schedule or Progress Works Schedule;
 - (b) an executive summary;
 - (c) design status, including input from the Service Provider team;
 - (d) Works Schedule Progress Report:
 - (i) Project Co shall submit a narrated report (the “**Works Schedule Progress Report**”) for review by Contracting Authority in accordance with Schedule 10 – Review Procedure, documenting the overall progress and schedule performance, the variances between Project Schedules where such variance is greater than 10 Working Days, and any related risks or issues;
 - (ii) The Works Schedule Progress Report shall include the following content:
 - (1) a cover page including the title “Works Schedule Progress Report”, the Project title, date of the report, issuance date, version date, and the version number of the relevant Works Schedule, Recovery Schedule or Progress Works Schedule, and the Project Co Representative signature approving the report;
 - (2) “Section 1. Overview”, including a narrated executive summary on progress, any noteworthy milestones achieved or schedule variances, and issues or risks that has or may impact the schedule;
 - (3) “Section 2. General Assumptions”, including assumptions used by Project Co to generate the schedule including but not limited to any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, etc.;
 - (4) “Section 3. Schedule analysis”, including at least:
 - (a) the forecast Scheduled Substantial Completion Date and Key Works Milestones;
 - (b) the overall progress expressed as a percentage of the physical work completed;

- (c) a summary schedule indicating the current critical path as calculated using the Current Progress Works Schedule;
 - (d) “Critical path risk”, including a narrative in tabular form describing the risks to completing the critical path activities to achieve Substantial Completion, and Project Co’s strategy to mitigate or avoid these risks;
- (5) “Section 4 – Critical Path Analysis” that includes the following information:
- (a) overall Project critical path and Near Critical Path Activities that includes a Gantt Chart schedule that shows the critical path of the Project as well as Near Critical Path Activities;
 - (b) actual progress against baseline target dates for each critical path or Near Critical Path Activity;
 - (c) any activities that were deemed critical or Near Critical Path Activities in the previous submission of a Proposed Works Schedule, Works Schedule, or Progress Works Schedule, as applicable, and have consumed a minimum of five Working Days float since then;
 - (d) any critical path or Near Critical Path Activities and/or milestones that are more than 20 Working Days behind schedule, relative to the Baseline Works Schedule;
 - (e) any critical path or Near Critical Path Activities and/or milestones that are more than 5 Working Days behind schedule relative to the immediate previous Progress Works Schedule;
 - (f) a narrative that describes the changes in the critical path or Near Critical Path Activities from the previous month;
 - (g) a list of all Works Activities that have become Near Critical Path Activities during the last reporting period;
 - (h) a list of all Works Activities that are Near Critical Path Activities that were forecasted in the immediately previous Progress Works Schedule, to start or finish in the current reporting period. Provide the reason for any of those activities that have not started or finished;
 - (i) provisions for addressing the behind-schedule critical path or Near Critical Path Activities such that Substantial

Completion will occur on the Scheduled Substantial Completion Date; and

- (j) a table entitled “Milestone and Critical path Variances”, listing all Key Works Milestones and all critical path activities, and for each, only if the variance between the current reporting period and the previous reporting period is greater than 5 Working Days, listing:
 - (i) the Activity ID and name;
 - (ii) the baseline start and end date in accordance with the Works Schedule or the Revised Works Schedule or current Recovery Schedule, as applicable;
 - (iii) the previous period’s planned start and end date in accordance with the previous Progress Works Schedule;
 - (iv) the forecast start and end date or, the actual start and end date where applicable in accordance with the Current Progress Works Schedule, clearly indicating any milestones to be achieved in the following 12 week period;
 - (v) the physical percentage completion;
 - (vi) “Total Variance” expressed in Working Days, calculated as a difference of forecast finish date from the current Working Schedule and the finish date from the Works Schedule, the Revised Works Schedule, as applicable;
 - (vii) the “Reporting Period Variance” calculated as the forecast finish date from the current Progress Schedule minus the finish date from the immediately previous Progress Works Schedule, expressed in Working Days; and
 - (k) Longest path – provide programme layouts for the longest path, extracted from the current Progress Schedule
- (6) “Section 5. Variances” including:
- (a) a narrative explaining the basis for any required changes to the sequencing of the Works, interdependencies, or original activity durations as set out in the Works Schedule or current

Recovery Schedule, as applicable, which changes, for clarity, shall be incorporated into the Progress Works Schedule; and

- (b) a table “Schedule logic changes” listing any:
 - (i) Addition, deletion or changes to activity relationships;
 - (ii) Addition or deletion of activities;
 - (iii) Changes or release of schedule constraints, and if so, what constraints were removed;
 - (iv) Changes to activity durations;
 - (v) Changes to activity calendar;
 - (vi) changes to the calendar default; and
 - (vii) Changes to milestones, and any other changes.

For clarity, for each schedule change Project Co shall provide a discrete explanation for circumstances and reasons leading to the change. Project Co shall not provide a general blanket explanation, for example similar to “change in strategy” or “according to recent market conditions,” but shall diligently explain in detail the strategy change or the specific conditions that led to that change.

- (7) “Section 6. Potential Delay Events” including a register of all potential Delay Events pursuant to Section 37.1(a) of the Project Agreement and for each a short description, the date on which the notice required pursuant to Section 37.2(b) and 37.2(d) of the Project Agreement was provided to Contracting Authority, the mitigation strategy implemented by Project Co, and the current status;
- (8) “Section 7. Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register;
- (9) “Section 8. progress photos”. Photos are to be taken from different views to indicate the progress of the Work in digital format, indicating the date and location of the photograph; and
- (10) any other information specifically requested by Contracting Authority on the progress of the Works;

- (e) Progress Works Schedule with version number;

Thunder Bay Correctional Complex Project

- (f) Look-Ahead Schedule with version number;
- (g) Works Submittals register pursuant to Schedule 10 – Review Procedure;
- (h) Request for Information (RFI) Log;
- (i) Variation Log;
- (j) health and safety, including:
 - (iii) the total number of hours worked for all persons on Site;
 - (iv) the total number of critical injuries or fatalities;
 - (v) the total number of injuries to any member of the public;
 - (vi) the total number of incidents involving medical aid or health care (as defined by the *Workplace Safety and Insurance Act* (Ontario));
 - (vii) the total number of incidents involving first aid (as defined by the *Workplace Safety and Insurance Act* (Ontario));
 - (viii) the total number of near misses (no damage to property or persons);
 - (ix) the total number of incidents resulting in lost time;
 - (x) the total number of incidents with no lost time; and
 - (xi) details of enquiries from the Ontario Ministry of Labour and the Ontario Ministry of the Environment, Conservation and Parks;
- (k) contractual outstanding decisions;
- (l) LEED status;
- (m) quality assurance and quality control, including:
 - (i) an update on all quality assurance and control processes;
 - (ii) quality control process prior to any closing in of any walls or ceilings or of any building envelope;
 - (iii) an update on street cleaning;
 - (iv) an update on site dust control;
 - (v) an update on adherence to noise by-laws, as applicable;

Thunder Bay Correctional Complex Project

- (vi) an update on neighbourhood interactions; and
- (vii) status of corrective actions previously identified;
- (n) organization / staffing changes and additions for Project Co and Construction Contractor;
- (o) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) Shop Drawings submittals status and also shown on the Current Progress Works Schedule; and
 - (v) labour report (average workforce);
- (p) financial status, including:
 - (i) all requirements of Schedule 19 – Construction Period Payments;
 - (ii) progress and Variations;
 - (iii) insurance summary;
 - (iv) Construction Contractor default status; and
 - (v) cash flow projection (capital cost components) and updated cash flow report and projections in conjunction with the Current Progress Works Schedule including a cash flow graph that depicts actual cash flow against projected cash flow;
- (q) risk management, including:
 - (i) permits and regulatory approvals;
 - (ii) claims;
 - (iii) liens;
 - (iv) environmental issues;
 - (v) labour;
 - (vi) market conditions;

Thunder Bay Correctional Complex Project

- (vii) outstanding disputes;
- (viii) operational risks; and
- (ix) other risks;
- (r) status of cash allowances, including:
 - (i) total contract cash allowance;
 - (ii) cash allowance approved to date;
 - (iii) cash allowance remaining; and
 - (iv) potential cash allowance quotes under review;
- (s) commissioning, occupancy and completion, including:
 - (i) commissioning status;
 - (ii) training status;
 - (iii) a detailed description and update on the process for turning over the relevant portion of the Facility to Contracting Authority upon Substantial Completion and, in respect of Final Completion, which shall include, but not be limited to, a description of any and all matters related to each turn-over that may impact or otherwise be relevant to the commencement of Contracting Authority's operations at such portion of the Facility, such as all relevant anticipated or actual Minor Deficiencies and Seasonal Works, and the timing and process for Project Co providing to Contracting Authority all keys and pass-cards to such portion of the Facility;
 - (iv) occupancy status;
 - (v) deficiency review/rectification status; and
 - (vi) completion status;
- (t) Equipment, SolGen Equipment and Existing Equipment status, including:
 - (i) planning and design;
 - (ii) progress of inventory activities in relation to Existing Equipment;
 - (iii) procurement progress of Equipment;
 - (iv) diminishing, refurbishment, storage, relocation and coordination of relocation; and

- (v) delivery, installation and commissioning progress; and
- (u) Transition status, including a Transition schedule update.

SCHEDULE 35

SITE

For the purpose of the Project Agreement:

- (a) **"Lands"** means, collectively, the following lands, including all structures, installations, fixtures, services and any other such improvements thereon and therein, including, subject to and in accordance with the Project Agreement, the Existing Facilities:
- (i) **PIN 62247-0029 (LT)**, being Lot 23-25, Concession 4, South Kaministiquia River, Township of Neebing; part Lot 22, Concession 4, South Kaministiquia River, Township of Neebing as in NBG3082, North of Part 1 on Plan TBR265675; Thunder Bay;
 - (ii) **PIN 62261-0061 (LT)**, being part Lot 22, Concession 4, South Kaministiquia River, Township of Neebing as in NBG3082, South of Highway 61; Thunder Bay;
 - (iii) **PIN 62261-0060 (LT)**, being part Lot 23, Concession 4, South Kaministiquia River, Township of Neebing, Lying South of Highway 61; Thunder Bay;
 - (iv) **PIN 62261-0004 (LT)**, being Lots 23-25, Concession 5, South Kaministiquia River, Township of Neebing, Except Part 1 on Plan 55R6128, Part 5 OFW59602, OFW23928; Thunder Bay; and
 - (v) any roads or other lands owned, leased or managed by a Governmental Authority required by Project Co and the Project Co Parties during and for the performance of the Project Operations. For greater certainty, Project Co's and the Project Co Parties' rights to use and access any such road or other lands owned, leased or managed by a Governmental Authority for the purposes of performing the Project Operations are subject to the applicable provisions of the Project Agreement (including, but not limited to Section 14.1(a) and Appendix 1 - Permits, Licences, Approvals and Agreements of Schedule 1 - Definitions and Interpretation of the Project Agreement), and, following the date of the Project Agreement, Project Co shall be required to obtain from such Governmental Authority such rights of use and access in accordance with the Project Agreement, Applicable Law and any other requirements imposed by such Governmental Authority; and
- (b) **"Site"** means, at any time and from time to time:

- (i) in respect of the Works and at all times subject to and in accordance with the Site Requirements, those portions of the Lands on, in or above which Project Co or any Project Co Party will be, is or was engaged in the performance of the Works, including but not limited to, any portions of the Lands (A) required for construction or Demolition activities; (B) required for access, loading, construction staging and laydown area purposes; and (C) that are hoarded, cordoned, or otherwise fenced off by Project Co or any Project Co Party for the purpose of the Works and, as required by Good Industry Practice, any Lands immediately surrounding such hoarding, cordons or fencing; and

- (ii) in respect of all Project Operations other than the Works, those portions of the Lands that are required by Project Co for the performance of such Project Operations, which, for clarity, during the Operational Term, exclude the portions of the Lands identified in Appendix "1" - Lands Excluded from the Site During the Operational Term to this Schedule 35, save and except for any portions of such excluded Lands which Project Co requires to access the Site in order to perform the Project Operations during the Operational Term.

APPENDIX 1

LANDS EXCLUDED FROM THE SITE DURING THE OPERATIONAL TERM

[REDACTED]

SCHEDULE 36

ENERGY MATTERS

1. DEFINITIONS AND APPENDICES

1.1 Definitions

- (a) “**Actual Consumption**” means the actual consumption of all Energy at the Facility as invoiced by the relevant Utility Company for the Initial Period and each Energy Year.
- (b) “**Adjusted Annual Energy Target**” has the meaning given in Section 6.2(c).
- (c) “**Adjusted Discrete Annual Energy Targets**” has the meaning given in Section 6.2(c).
- (d) “**Annual Energy Target**” has the meaning given in Section 4.3(a)(ii).
- (e) “**Annual Review Date**” means each anniversary of the end of the Initial Period.
- (f) “**Annual Review Meeting**” has the meaning set out in Section 9.3(c).
- (g) “**BOMA**” means the standard of measuring floor area of the Building Owners and Managers Association.
- (h) “**Current Conditions Energy Model**” has the meaning set out in Section 4.2(f).
- (i) “**Discrete Average Unit Cost**” means the average cost by Energy type of each Unit of Energy purchased under each Energy Utility Agreement during the relevant Energy Year, calculated in accordance with Section 12.
- (j) “**Discrete Energy Service Actual Consumption**” means the actual consumption of an individual Energy Service at the Facility as invoiced by the relevant Utility Company for each Energy Year.
- (k) “**Discrete Annual Energy Target**” has the meaning given in Section 4.3(a)(i).
- (l) “**End User Energy**” means the directly metered provision of Energy (other than the Facility Energy or the Outbuilding Energy), including Energy consuming systems and equipment provided and/or maintained and lifecycled by Contracting Authority.
- (m) “**End User Equipment**” means any item of equipment at the Facility consuming End User Energy.

- (n) “**End User Equipment Ratio**” means, with respect to each item of End User Equipment, the ratio of (i) the heat gain or heat loss generated directly from an item of End User Equipment to (ii) the Energy consumed by that End User Equipment, which shall be calculated, agreed upon and adjusted in accordance with Section 7.
- (o) “**Energy**” means energy, including electricity, natural gas, fuel oil, renewable or sustainable energy, and any other energy source used at the Facility measured at the Utilities connection.
- (p) “**Energy Analysis Report**” has the meaning given in Section 9.3(a).
- (q) “**Energy Service**” means the metered provision of each separate Energy type measured at the Utilities connection.
- (r) “**Energy Target Letter**” means the letter described in Section 4.4(a), or any letter replacing the Energy Target Letter pursuant to Section 6.3(f).
- (s) “**Energy Utility Agreement**” has the meaning given in Section 3.1
- (t) “**Energy Year**” means the period of 12 months beginning on the day after the expiry of the Initial Period and ending on the first Annual Review Date, and each subsequent period of 12 months during the Operational Term beginning on the day after an Annual Review Date.
- (u) “**Facility Energy**” means the metered provision of Energy (other than Outbuilding Energy) for the Facility's base building systems and equipment, and any other Energy consuming systems designed, provided, maintained and lifecycled by Project Co, whereby all consumption of such Energy is directly or indirectly Project Co's responsibility. Such systems and equipment include, but are not limited to the loads described in rows #23 to #36 in Table A-1 of Appendix H of this Schedule 36. All loads that are not directly metered or sub-metered but would otherwise be End User Energy shall be deemed to be part of the Facility Energy.
- (v) “**Gainshare Adjustment**” or “**GS**” means the adjustment calculated in accordance with Section 11.
- (w) “**Greenhouse Gas Emissions Intensity**” means the total greenhouse gas emissions associated with all Energy divided by the Gross Building Floor Area For Energy Metrics, reported in kilograms of CO₂-equivalent per square meter (kgCO₂-eq/m²):
 - (i) for the period of the Project Term ending prior to Substantial Completion and for the purposes of the submission of the Major Energy Submission Packages during such period, Greenhouse Gas Emissions Intensity shall be calculated using the outputs of the Target Energy Model, which includes emissions for each Energy Service established by reference to the Pre-Substantial Completion GHG Emissions Factor for such Energy Service; and

- (ii) for the period of the Project Term following Substantial Completion, Greenhouse Gas Emissions Intensity shall be calculated based on Discrete Energy Service Actual Consumption, which includes emissions for each Energy Service established by reference to the Post-Substantial Completion GHG Emissions Factor for such Energy Service.
- (x) **“Gross Building Floor Area For Energy Metrics”** means the total gross floor area of the Facility (including the entirety of any occupied floor plates and the thickness of walls) minus the gross floor area of any parking areas included in the such total, all of which shall be calculated using BOMA Method A in accordance with ANSI/BOMA Z65.1-2010 or as otherwise agreed by the Parties.
- (y) **“High Cost Measures”** means, in respect of an Energy Year, Energy saving measures that require capital expenditures with a Simple Payback of greater than or equal to 36 months.
- (z) **“Initial Period”** means the period beginning on the first day of the first full calendar month immediately after the Substantial Completion Date and ending one year thereafter.
- (aa) **“LEED Proposed Building Energy Model”** has the meaning given in Section 4.2(d).
- (bb) **“Low Cost Measures”** means in respect of an Energy Year, Energy saving measures that require capital expenditures with a simple payback less than 36 months and are considered to be revenue items as opposed to capital investment items.
- (cc) **“Major Energy Submission Package”** means all of the documents and other deliverables described in Appendix H to this Schedule 36.
- (dd) **“Mandatory Energy Targets”** has the meaning given in Section 4.1(a).
- (ee) **“Metering Locations”** means the set of Energy metering and sub-metering points described in Sections 2 and 3 of Part III - Building Statement of Schedule 15 – Output Specifications.
- (ff) **“Metering Requirements”** means the Energy metering and sub-metering requirements described in Sections 2 and 3 of Part III - Building Statement of Schedule 15 – Output Specifications.
- (gg) **“Monthly Energy Report”** has the meaning given in Section 4.1 of Appendix B to this Schedule 36.
- (hh) **“No Cost Measures”** means Energy savings measures, including those related to good house-keeping, involving no material additional expenditures and/or no capital expenditures to carry out.

Thunder Bay Correctional Complex Project

- (ii) **“Outbuilding Energy”** means the directly metered provision of Energy for the outbuilding's base building systems and equipment which are designed, provided, maintained and lifecycled by Project Co. For clarity, such outbuildings are identified as exterior structures or spaces in Section 4.3, of Schedule 15 - Part II of the Project Agreement with space codes from 7.2.21 to 7.2.30, 7.2.31, 7.3.10, from 7.3.12 to 7.3.14, 7.3.16, and 7.3.17.
- (jj) **“Painshare Adjustment”** or **“PS”** means the adjustment calculated in accordance with Section 11.
- (kk) **“Post-Substantial Completion GHG Emissions Factor”** means the most recent emissions factor estimate for each of the following Energy Services, expressed in terms of kilograms of carbon-dioxide equivalent per Unit of Energy:
 - (i) for electricity, as set out in the quarterly Ontario Energy Report published by the Independent Electricity Systems Operator for Ontario or, in the event that such report ceases to be published or is otherwise unavailable during the Project Term, as set out in any other report covering the same or a similar subject matter as agreed by the Parties; and
 - (ii) for all other Energy Service types, as set out in the National Inventory Report published by Environment and Climate Change Canada or, in the event that such report ceases to be published or is otherwise unavailable during the Project Term, as set out in any other report covering the same or a similar subject matter as agreed by the Parties.
- (ll) **“Pre-Close Target Energy Model”** has the meaning given in Section 4.2(a).
- (mm) **“Pre-Substantial Completion GHG Emissions Factor”** means the emissions factor for each of the following Energy Services expressed in terms of kilograms of carbon-dioxide equivalent per Unit of Energy:
 - (i) Electricity: 30 grams of CO₂-eq per kWh;
 - (ii) Natural Gas: 177 grams of CO₂-eq per kWh;
 - (iii) Propane: 220 grams of CO₂-eq per kWh;
 - (iv) Fuel Oil (No. 1, 2, 4): 254 grams of CO₂-eq per kWh; and
 - (v) Diesel Oil: 262 grams of CO₂-eq per kWh.
- (nn) **“Project Energy Models”** means, collectively, the Target Energy Model and the Current Conditions Energy Model.
- (oo) **“Project Energy Models Requirements”** means the requirements set out Appendix D to this Schedule 36.

Thunder Bay Correctional Complex Project

- (pp) “**Quarterly Monitoring Meeting**” has the meaning set out Section 2.2 of Appendix B to this Schedule 36.
- (qq) “**Simple Payback**” means the number of years after which an investment will have paid for itself and is calculated by dividing the initial cost of the Energy retrofit by the Energy cost savings. Projects with the shortest paybacks are assumed to be the most cost-effective.
- (rr) “**Target Energy Model**” has the meaning given in Section 4.2(a).
- (ss) “**Thermal Energy Demand Intensity**” means the heating load on the Facility attributable to (i) heating and (ii) conditioning ventilation air, divided by the Gross Building Floor Area For Energy Metrics, calculated in accordance with the requirements of the Toronto Green Standard’s Energy Modeling Guidelines (Version V3). Prior to the Initial Period, Thermal Energy Demand Intensity shall be calculated using the outputs of the Target Energy Model. After the Initial Period, Thermal Energy Demand Intensity shall be based on metered Energy.
- (tt) “**Total Energy Use Intensity**” means the sum, calculated annually, of all Energy for the Facility divided by the Gross Building Floor Area For Energy Metrics. Before the Initial Period, Total Energy Use Intensity shall be calculated using the outputs of the Target Energy Model. After the Initial Period, Total Energy Use Intensity shall be calculated based on metered Energy.
- (uu) “**Unit of Energy**” means one equivalent kilowatt-hour (ekWh).
- (vv) “**Utilities Management Subcommittee**” has the meaning set out in Section 2.2 of Appendix B to this Schedule 36.
- (ww) “**Weather Data**” means meteorological data as reported by Environment Canada for Thunder Bay Airport, Ontario, or in the event that no meteorological data is available for Thunder Bay Airport for a particular day or days, the meteorological data as reported by Environment Canada for the Environment Canada weather station that is next-closest geographically to the Facility for such day or days.
- (xx) “**Whole-enclosure RSI**” means the weighted average effective thermal resistance of the entire above grade portion of the Facility’s building envelope (including exterior walls, fenestration (e.g. vertical glazing and skylights), exposed floor and roof) expressed in units of $m^2 \text{ }^\circ\text{K/W}$, as calculated in accordance with the process set out in Section 5.5 (Calculating Envelope Heat Loss) of the Toronto Green Standard v3 Energy Modeling Guidelines Version V3.

1.2 Appendices to this Schedule 36

- (a) This Schedule 36 is comprised of the following:
 - (i) these general provisions of this Schedule 36;

Thunder Bay Correctional Complex Project

- (ii) Appendix A – Utilities Data;
- (iii) Appendix B – Energy Protocol;
- (iv) Appendix C – Sample Metering Location Summary Table;
- (v) Appendix D – Project Energy Models Requirements;
- (vi) Appendix E – Target Energy Model and LEED Proposed Building Energy Model;
- (vii) Appendix F – Project Energy Models Program Summary and Schedules Workbook;
- (viii) Appendix G – Energy Target Letter;
- (ix) Appendix H – Major Energy Submission Package; and
- (x) Appendix I – Mandatory Energy Performance Target Calculator.

2. GENERAL

- 2.1 Without limiting or prejudice to any provision of the Project Agreement, the objective of this Schedule 36 is to set out the Parties’ obligations under the Project Agreement with respect to the supply of Energy to and the consumption of Energy at the Facility and the targeting, monitoring, measurement and reporting of such consumption of Energy following Substantial Completion.
- 2.2 The Parties agree that it is important to maintain an appropriate balance between:
- (a) ensuring the efficient use of Energy at the Facility and minimizing the level of emissions of greenhouse gases and harmful substances caused by the use of Energy at the Facility (regardless of where the Energy is generated); and
 - (b) minimizing the monetary cost of Energy usage at the Facility.

3. SUPPLY OF ENERGY

- 3.1 Except as expressly set out in the Project Agreement to the contrary or as otherwise agreed by the Parties, Contracting Authority shall enter into contracts with Utility Companies for the supply of Energy to the Facility (each is an “**Energy Utility Agreement**”). With respect to each Energy Utility Agreement, unless the Parties otherwise agree, Project Co shall:
- (a) obtain the Energy Utility Agreement for Contracting Authority, the form of which shall be subject to the prior approval of Contracting Authority;

Thunder Bay Correctional Complex Project

- (b) perform all work and provide all information, documentation and administrative assistance required for Contracting Authority to enter into the Energy Utility Agreement; and
 - (c) perform and satisfy all obligations and satisfy all liabilities of Contracting Authority under the Energy Utility Agreement (including the obligation to make and the liability for making all payments under the Energy Utility Agreement to the applicable Utility Company for the supply of Energy to the Facility) as if Project Co were Contracting Authority for the purposes of such Energy Utility Agreement.
- 3.2 At Contracting Authority’s or the Utility Company’s request, Project Co or a Subcontractor shall execute and deliver any Energy Utility Agreement as an additional party to such agreement.
- 3.3 Project Co confirms that the Financial Model contains no provision for the cost of paying for the supply of Energy to the Facility for which Contracting Authority will not reimburse Project Co pursuant to the Project Agreement.

4. ENERGY TARGETS, MODELS AND TARGET LETTER

4.1 Mandatory Energy Targets

- (a) Project Co acknowledges that:
 - (i) subject to Section 4.1(d), Section 4.3.6 (Mandatory Energy Targets) of Part I of Schedule 15 – Output Specifications sets out that the Facility shall achieve certain mandatory targets in relation to the efficiency and sustainability of Energy consumption at the Facility (collectively, the “**Mandatory Energy Targets**”); and
 - (ii) the Target Energy Model shall satisfy the requirements in respect of the Mandatory Energy Targets set out in Section 4.3(a)(i).
- (b) For greater certainty, the Mandatory Energy Targets are in respect of the following:
 - (i) Total Energy Use Intensity;
 - (ii) Greenhouse Gas Emissions Intensity;
 - (iii) Thermal Energy Demand Intensity; and
 - (iv) Whole-enclosure RSI.
- (c) The Mandatory Energy Targets shall not be adjusted during the Project Term other than in accordance with Schedule 22 – Variation Procedure.

Thunder Bay Correctional Complex Project

- (d) Without limiting or prejudice to any provision of the Project Agreement other than Section 4.3.6 (Mandatory Energy Targets) of Part I of Schedule 15 – Output Specifications (including without limiting or prejudice to any other provision relating to Project Co’s design or construction obligations under the Project Agreement and any provision of Schedule 20 – Payment Mechanism), the Parties agree that, following the Initial Period:
 - (i) Project Co shall exert commercially reasonable efforts to ensure that Discrete Energy Service Actual Consumption at the Facility in respect of each Energy Service is less than or equal to the associated Mandatory Energy Target, provided that
 - (ii) in the event that, after exerting such efforts, Project Co fails to ensure that Discrete Energy Service Actual Consumption at the Facility in respect of an Energy Service is less than or equal to the associated Mandatory Energy Target, Contracting Authority’s sole remedy under the Project Agreement in respect of such specific failure is set out in Section 13 or Section 14.2.

4.2 Project Energy Models and LEED Proposed Building Energy Model

- (a) The Parties acknowledge that:
 - (i) Project Co is required to deliver to Contracting Authority an energy model that:
 - (A) satisfies the applicable Project Energy Models Requirements;
 - (B) includes the Discrete Annual Energy Targets and the Annual Energy Target determined in accordance with Section 4.3(a); and
 - (C) is consistent with the Energy Target Letter,
(the “**Target Energy Model**”);
 - (ii) Project Co delivered to Contracting Authority an energy model on April 21, 2022 with the file name “2022-04-20 TBC_VE Target [VE2021].cab” (the “**Pre-Close Target Energy Model**”);
 - (iii) the Pre-Close Target Energy Model has not been agreed to or accepted by Contracting Authority, and Contracting Authority may, at its option, deliver comments on the Pre-Close Target Energy Model to Project Co prior to the date that Project Co re-submits the Pre-Close Target Energy Model to Contracting Authority pursuant to Section 4.2(a)(iv), provided that any such comments shall not be delivered pursuant to the terms of the Review Procedure;

- (iv) Project Co shall re-submit the Pre-Close Target Energy Model and any revisions thereto for review by Contracting Authority pursuant to Schedule 10 – Review Procedure on or before the date that Project Co submits the first of the 100% Design Development Submittals, and on such re-submission to Contracting Authority the Pre-Close Target Energy Model shall be deemed to be a Works Submittal for the purposes of Schedule 10 – Review Procedure (provided that the Contracting Authority Review Period in respect of the Pre-Close Target Energy Model shall be 15 Business Days); and
 - (v) following the re-submission of the Pre-Close Target Energy Model to Contracting Authority pursuant to Section 4.2(a)(iv), and once the Pre-Close Target Energy Model has received a comment of “MINOR NON-CONFORMANCE” without the comment “RE-SUBMIT” or a comment of “NO COMMENT”, in each case by Contracting Authority pursuant to Schedule 10 – Review Procedure, the Pre-Close Target Energy Model shall become the Target Energy Model and shall be attached as Part B of Appendix E to this Schedule 36 pursuant to Section 4.2(e) and shall be deemed to form part of the Project Agreement without the need for any further action by the Parties or any amendment to the Project Agreement.
- (b) Subject to Section 2.4 of Appendix D to this Schedule 36, the End User Equipment Ratios with the corresponding consumption of metered End User Energy shall be set out in the Target Energy Model such that any internal heat gains or losses at the Facility associated with changes in the End User Energy consumption are appropriately reflected in the Discrete Annual Energy Targets and the Annual Energy Target.
 - (c) Project Co shall only be permitted to update the Target Energy Model in accordance with Sections 6.1 and 6.2 and in connection with any amendment to any of the Discrete Annual Energy Targets and the Annual Energy Target pursuant to Section 6.3 (including as a result of any applicable Variation).
 - (d) Project Co shall, in accordance with Schedule 2 – Completion Documents, deliver to Contracting Authority an energy model for the ‘Proposed Building’ as defined in the LEED BD+C v4 Reference Guide that demonstrates that the Facility shall achieve the LEED credits identified as mandatory and prerequisites in Section 4.3.3 (LEED® Design Requirements) of Part I of Schedule 15 – Output Specifications (the “**LEED Proposed Building Energy Model**”).
 - (e) The LEED Proposed Building Energy Model delivered pursuant to Section 4.2(d) and the Target Energy Model delivered and finalized pursuant to Section 4.2(a)(v) are attached as Part A and Part B, respectively, of Appendix E to this Schedule 36.
 - (f) Project Co shall, as part of each Major Energy Submission Package submitted following Financial Close, deliver to Contracting Authority an energy model that

- (i) with respect to each version of such energy model to be delivered
 - (A) prior to Substantial Completion, accurately reflects, as of the date such energy model is delivered to Contracting Authority, the Facility designed and under construction and the expected Energy Services to be consumed at the Facility during the Initial Period and each Energy Year during the Operational Term; and
 - (B) following the expiry of the Initial Period, accurately reflects, as of the date such energy model is delivered to Contracting Authority, the design and construction of the Facility, the Energy Services consumed at the Facility during the Initial Period, and the expected consumption of Energy Services at the Facility during each Energy Year during the Operational Term; and
- (ii) satisfies the applicable Project Energy Models Requirements
(the “**Current Conditions Energy Model**”).
- (g) The Project Energy Models shall at all times satisfy the applicable Project Energy Models Requirements.
- (h) Subject to Section 6.3(e) and Schedule 22 – Variation Procedure, Project Co shall, within 5 Business Days of Contracting Authority’s written request, provide to Contracting Authority a copy of the most recently updated version of the Target Energy Model.
- (i) Until the expiry of the period that is five years following the Substantial Completion Date, Project Co shall, within 5 Business Days of Contracting Authority’s written request, provide to Contracting Authority a copy of the most recently updated version of the Current Conditions Energy Model and the LEED Proposed Building Energy Model.

4.3 Discrete Annual Energy Targets and Annual Energy Target

- (a) The Target Energy Model shall set out:
 - (i) a target for the consumption of each Energy Service at the Facility that is applicable to each and every Energy Year, which shall (A) take into account the estimated aggregate of the Facility Energy and the End User Energy that will be consumed at the Facility in each Energy Year; (B) be a direct output of the Target Energy Model; and (C) be less than or equal to the associated Mandatory Energy Target (each is a “**Discrete Annual Energy Target**”); and
 - (ii) a target for the consumption of all Energy Services at the Facility that is applicable to each and every Energy Year, which shall be the aggregate of

each of the Discrete Annual Energy Targets and a direct output of the Target Energy Model (the “**Annual Energy Target**”).

- (b) Without limiting or prejudice to any provision of the Project Agreement, the Discrete Annual Energy Targets and the Annual Energy Target shall:
 - (i) only be adjusted during the Project Term in accordance with Section 6.3 if an event described in Section 6.3(a) occurs and at a time described in Section 6.3(b); and
 - (ii) subject to and in accordance with Sections 6.2, 6.3 and 10 to 14 (inclusive), be used as a benchmark to calculate if any Painshare Adjustment or Gainshare Adjustment arises under this Schedule 36 and if Section 14.2 shall apply.

4.4 Energy Target Letter

- (a) Project Co shall, in accordance with Schedule 2 – Completion Documents, deliver to Contracting Authority an energy target letter formally setting out the Discrete Annual Energy Targets and the Annual Energy Target (the “**Energy Target Letter**”).
- (b) Subject to and in accordance with this Schedule 36, the Energy Target Letter shall be binding on Project Co during the Operational Term unless and until such time as it is replaced by a new Energy Target Letter pursuant to Section 6.3(f).
- (c) The Energy Target Letter delivered to Contracting Authority pursuant to Section 4.4(a) is attached to Appendix G to this Schedule 36.

4.5 Major Energy Submission Package

- (a) Project Co shall submit to Contracting Authority a Major Energy Submission Package at each of the following times in accordance with Schedule 10 – Review Procedure:
 - (i) on the date Project Co submits the first of the 100% Design Development Submittals pursuant to Schedule 10 – Review Procedure;
 - (ii) on the date Project Co submits the first of the 100% Construction Document Submittals pursuant to Schedule 10 – Review Procedure;
 - (iii) on the date Project Co submits the Substantial Completion Notice; and
 - (iv) within 75 days following the expiry of the Initial Period.
- (b) The purpose of the Major Energy Submission Packages is to provide Contracting Authority with the information set out in such documents and deliverables on an

iterative basis at certain advanced stages of the construction of the Facility prior to Substantial Completion and following the Initial Period, and, if applicable, to allow the Parties to update the Discrete Annual Energy Targets and the Annual Energy Target pursuant to Section 6.3 following the submission of each Major Energy Submission Package.

5. ENERGY PROTOCOL

- (a) The Parties agree to comply with Appendix B to this Schedule 36.

6. UPDATES TO THE PROJECT ENERGY MODELS

6.1 Updates to the Project Energy Models prior to Substantial Completion

- (a) Project Co shall update the Project Energy Models to reflect the occurrence of any events described in Section 6.3(a)(i) immediately before the submission of, and shall include the Project Energy Models as part of, each of the Major Energy Submission Packages submitted to Contracting Authority on each of the dates described in Sections 4.5(a)(i) to 4.5(a)(iii) (inclusive); and
- (b) Project Co shall update the Project Energy Models pursuant to Section 1.3(b) of Appendix D to this Schedule 36 if Project Co requests and obtains the consent of Contracting Authority to make such adjustment pursuant to such Section.

6.2 Annual Updates to the Target Energy Model

- (a) For the Initial Period and each Energy Year, Project Co shall update the Target Energy Model by taking into account only the following input data:
- (i) the Weather Data for, as applicable, the Initial Period or the Energy Year in accordance with Section 6.2(b);
 - (ii) the metered End User Energy for, as applicable, the Initial Period or the Energy Year, which shall be applied to the Target Energy Model such that the modeled End User Energy matches the metered End User Energy;
 - (iii) the End User Equipment Ratios, which shall be reflected in the Target Energy Model;
 - (iv) the effect on Energy consumption at the Facility of any Relief Event, event of Force Majeure, or Excusing Cause; and
 - (v) the aggregate impact of all Variations.
- (b) For the purpose of updating the Target Energy Model related to the Weather Data set out in Section 6.2(a), Project Co shall obtain the Weather Data from

Environment Canada and shall update the Target Energy Model by revising the input data in accordance with the following:

- (i) the dry bulb temperature and dew point temperature shall be the only updated inputs;
- (ii) hourly values for, as applicable, the Initial Period or the Energy Year shall be obtained; and
- (iii) unless otherwise agreed by the Parties, the weather file shall be updated by Project Co:
 - (A) starting with the Energy Plus weather file for the same location as specified for the Weather Data (.epw extension);
 - (B) converting such file to a .csv file and importing it into Microsoft Excel;
 - (C) adjusting the dry bulb temperature and dew point temperature, and, if applicable, humidity or pressure, as per the Environment Canada weather data and saving the file;
 - (D) converting the file back to .epw; and
 - (E) using the program eQ_thProc (available from www.doe2.com) to convert the new .epw file into a .bin file for use with the Target Energy Model.
- (c) The Parties agree that, for the purposes of determining if a Gainshare Adjustment or a Painshare Adjustment for an Energy Year has arisen, and to allow for its calculation, under this Schedule 36, direct outputs from each update to the Target Energy Model carried out in accordance with Section 6.2(a) shall be adjustments to the Discrete Annual Energy Targets and the Annual Energy Target that are applicable to such Energy Year (the “**Adjusted Discrete Annual Energy Targets**” and the “**Adjusted Annual Energy Target**” respectively). The Parties acknowledge and confirm that no Adjusted Discrete Annual Energy Targets or Adjusted Annual Energy Target shall constitute an amendment to any of the Discrete Annual Energy Targets or the Annual Energy Target unless the Parties agree to such amendment in accordance with Section 6.3.
- (d) For greater certainty, Project Co shall submit:
 - (i) the updated Target Energy Model for the Initial Period as part of the Major Energy Submission Package submitted to Contracting Authority before the expiry of the period described in Section 4.5(a)(iv); and

Thunder Bay Correctional Complex Project

- (ii) in accordance with Section 9.4(c), the updated Target Energy Model for each Energy Year as part of the Energy Analysis Report for such Energy Year submitted to Contracting Authority before the expiry of the period described in Section 9.3.
- (e) Contracting Authority may, in its sole discretion, appoint a third party auditor to audit any of Project Co's updates to the Target Energy Model (including all input data used by Project Co to complete any update to the Target Energy Model) carried out pursuant to this Section 6. If the audit concludes that Project Co has incorrectly calculated the updates to the Target Energy Model, then Project Co shall reimburse Contracting Authority for its costs and expenses incurred in respect of the audit and a corresponding correction shall be made to the Target Energy Model, which includes a correction to the Adjusted Discrete Annual Energy Targets and the Adjusted Annual Energy Target.

6.3 Amendments to the Discrete Annual Energy Targets and the Annual Energy Target

- (a) The Discrete Annual Energy Targets and the Annual Energy Target shall only be amended under the Project Agreement if and to the extent of:
 - (i) any Variation implemented in accordance with Schedule 22 – Variation Procedure that has caused or will cause a change in the Facility Energy, the End User Equipment Ratios or Energy consumption at the Facility; or
 - (ii) any change in the use of the Facility from those described in the Project Agreement that impacts the Facility's temperature set points, operating hours and occupancies described in Appendix F to this Schedule 36, but not including changes in End User Energy consumption.
- (b) If any of the events described in Section 6.3(a) occurs, the impacted Discrete Annual Energy Target(s) and the Annual Energy Target shall be amended:
 - (i) as part of a Variation implemented in accordance with Schedule 22 – Variation Procedure, or, in the sole discretion of Contracting Authority, at a later date pursuant to Section 6.3(b)(ii); and
 - (ii) subject to Section 6.3(c), following
 - (A) Project Co's submission of a Major Energy Submission Package pursuant to Section 4.5(a);
 - (B) each Annual Review Meeting; or
 - (C) an audit of Energy use at the Facility in accordance with Section 8.2.
- (c) Within 20 Business Days following the occurrence of any event described in Section 6.3(b)(ii) (or such longer period agreed to by the Parties), the Parties shall,

acting reasonably, agree to an amendment to the impacted Discrete Annual Energy Target(s) and the Annual Energy Target. If the Parties fail to agree to such amendment within a further 10 Business Day period, then either Party may refer the matter for resolution pursuant to Schedule 27 – Dispute Resolution Procedure.

- (d) The Parties acknowledge and agree that any amendments to the Discrete Annual Energy Targets and the Annual Energy Target made in accordance with this Section 6.3:
- (i) shall be made by Project Co updating the Target Energy Model to account for, and to only account for, the impact of each of the relevant events described in Section 6.3(a), the objective of such update being to ensure that, other than in respect of the impact of each of the relevant events, the Parties are in no better and no worse position in relation to the Project than they would have been in if each of the relevant events had not occurred. The amended Discrete Annual Energy Targets and Annual Energy Target shall be direct outputs of such modified Target Energy Model;
 - (ii) may require an adjustment to the Adjusted Discrete Annual Energy Targets and the Adjusted Annual Energy Target for the applicable Energy Year; and
 - (iii) shall be applicable during the Operational Term from and after the date each of the relevant events described in Section 6.3(a) occurred (including, if applicable, the date of the effectiveness of any relevant Variation in accordance with Schedule 22 – Variation Procedure), provided that, in the Energy Year in which each such event occurred, the determination as to whether or not any Gainshare Adjustment or any Painshare Adjustment arose shall, with respect to the portion of the Energy Year ending immediately before the date such event occurred, be based on the Discrete Annual Energy Targets and the Annual Energy Target prior to such amendment, and, with respect to the portion of the Energy Year from the date of such event until the end of such Energy Year, be based on the amended Discrete Annual Energy Targets and the Annual Energy Target.
- (e) Project Co shall, promptly following Contracting Authority's written request, provide to Contracting Authority a copy of the Target Energy Model updated pursuant to Section 6.3(d)(i).
- (f) Project Co agrees that, prior to and as a condition of any amendment to the Discrete Annual Energy Targets and the Annual Energy Target made in accordance with this Section 6.3 becoming effective, Project Co shall execute and deliver to Contracting Authority an original copy of a replacement Energy Target Letter, which includes the amended Discrete Annual Energy Targets and Annual Energy Target, reflects the related adjustments to the Target Energy Model and is otherwise in the form of the Energy Target Letter attached to Appendix G to this Schedule 36.

7. END USER EQUIPMENT RATIOS

- (a) Subject to Sections 7(b) and 7(c), the End User Equipment Ratios shall be agreed upon between the Parties, each acting reasonably, as soon as practicable following Substantial Completion.
- (b) Each End User Equipment Ratio shall be calculated in accordance with the following requirements:
 - (i) manufacturers' data shall be used to calculate each End User Equipment Ratio when it is available; and
 - (ii) if manufacturers' data is unavailable, the method and inputs for calculating the End User Equipment Ratio shall be agreed upon by the Parties, each acting reasonably.
- (c) If the Parties are unable to agree to an End User Equipment Ratio for any item of End User Equipment pursuant to Section 7(a), then either Party may refer the matter for resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (d) When End User Equipment is added to or removed from the Facility, the End User Equipment Ratios may be adjusted on an annual basis upon the agreement of the Parties, each acting reasonably, to account for such changes in End User Equipment.

8. ENERGY AUDITS FOLLOWING SUBSTANTIAL COMPLETION

- 8.1 Within 10 Business Days of the expiry of the Initial Period, Project Co shall, subject to the approval of Contracting Authority (acting reasonably), appoint and pay for a third party auditor to complete an audit of Energy use at the Facility to assess the Facility's Energy performance and consumption relative to the Project Energy Models and the performance and accuracy of the Facility's Energy metering (including sub-metering) system. In connection with such audit:
- (a) Project Co shall, within 5 Business Days following the request of Contracting Authority or such third party auditor and at Project Co's cost and expense, provide Contracting Authority and such third party auditor any documentation or deliverables reasonably requested by Contracting Authority or such third party auditor;
 - (b) Project Co shall cause the third party auditor to provide a copy of its report to Contracting Authority at the same time it is provided to Project Co. Such report shall (i) determine if the Mandatory Energy Targets, the Discrete Annual Energy Targets and the Annual Energy Target have been met using metered Energy data and assess and determine whether any failure to meet any such targets is the result of a failure of Project Co or the Facility to comply with and satisfy the requirements of the Output Specifications or the other terms and conditions of the Project

Thunder Bay Correctional Complex Project

Agreement; and (ii) make recommendations in respect of improvements to the Energy performance of the Facility and any corrective actions desirable or necessary to improve such performance;

- (c) If any corrective actions to improve the Energy performance of the Facility are recommended in the third party auditor's report and such corrective actions are required as a result of a failure of Project Co or the Facility to comply with and satisfy the requirements of the Output Specifications and the other terms and conditions of the Project Agreement, then Project Co shall, as soon as practicable and at its sole cost and expense, perform and complete such corrective actions; and
- (d) If either Party disagrees with the contents of the third party auditor's report, including any recommendations contained within such report, then such Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

8.2 At any time following Substantial Completion other than as set out in Section 8.1, either Party may request an audit of Energy use at the Facility. The Party requesting such audit shall appoint, subject to the other Party's approval (acting reasonably) and pay for a third party auditor to complete a full audit of Energy use at the Facility. Such audit shall include a detailed computer simulation of Energy use by function and a comprehensive evaluation of Energy use patterns. Project Co shall, within 5 Business Days following the request of Contracting Authority or such third party auditor and at Project Co's cost and expense, provide Contracting Authority and such third party auditor any documentation or deliverables reasonably requested by Contracting Authority or such third party auditor. Following the completion of such audit, the third party auditor shall prepare a report making recommendations in respect of Energy use at the Facility, including regarding any necessary amendments to the Discrete Annual Energy Targets and the Annual Energy Target if and to the extent that any event described in Section 6.3(a) has occurred.

9. ENERGY CONSUMPTION MEASUREMENT AND REPORTING

9.1 Energy Measurement, Metering and Monthly Reporting

- (a) Without limiting or prejudice to any provision of the Project Agreement, during the Operational Term, Project Co shall measure and monitor all Energy consumption at the Facility on a monthly, quarterly and annual basis in accordance with this Schedule 36, including the Actual Consumption and Discrete Energy Service Actual Consumption in respect of each type of Energy consumed at the Facility.
- (b) Project Co acknowledges and agrees that an operational building management system and operational meters and sub-meters at the Facility are essential to the measurement and monitoring of Energy consumption at the Facility and the application of this Schedule 36 and the other applicable provisions of the Project Agreement.

- (c) In the event that Project Co fails to comply with any of the requirements of Section 3.4 (Utilities Management Services) of Part IV of Schedule 15 – Output Specifications, an Energy Failure shall arise and Deduction(s) shall apply in accordance with such requirements and Schedule 20 Payment Mechanism.

9.2 Annual Consumption Certification

- (a) By no later than 30 days after each Energy Year, Project Co shall provide to Contracting Authority a certificate of an officer of Project Co setting out the Actual Consumption and the Discrete Energy Service Actual Consumption in each Contract Month during such Energy Year expressed as Units of Energy.

9.3 Delivery of Annual Energy Analysis Report

- (a) Within 75 days following the end of each Energy Year, Project Co shall provide to Contracting Authority a report in respect of Energy consumption at the Facility during such Energy Year that satisfies the requirements set out in Section 9.4 and includes copies of all working papers necessary to fully support the contents and conclusions set out in such report (the “**Energy Analysis Report**”).
- (b) Within 10 Business Days of the expiry of the 75 day period set out in Section 9.3(a), if Project Co either (i) fails to submit an Energy Analysis Report or (ii) fails to submit an Energy Analysis Report in accordance with the requirements of this Schedule 36 and, in Contracting Authority’s opinion, such failure prevents the accurate calculation of any applicable Painshare Adjustment or Gainshare Adjustment related to period covered by the Energy Analysis Report, one or more Energy Failures shall arise and one or more Deductions shall apply in accordance with Section 3.4 (Utilities Management Services) of Part IV of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism.
- (c) As soon as practicable and in any event within 80 days following the end of each Energy Year (or on such other date as may be agreed between Contracting Authority and Project Co), Project Co and Contracting Authority shall convene an annual review meeting to be attended by the Project Co Representative, the Contracting Authority Representative and such other individuals as may be agreed to by the Parties (the “**Annual Review Meeting**”). At the Annual Review Meeting, Project Co shall present the Energy Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding Energy Year and the Energy Services.
- (d) Project Co shall assist the Contracting Authority Representative and provide the Contracting Authority Representative such information and access to the Facility, building management system records, Utilities meters and FM Help Desk (as such services are described in Schedule 15 – Output Specifications) and by other means as may reasonably be required for the Contracting Authority Representative to

approve the Energy Analysis Report pursuant to Section 9.3(e), including to determine the Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service at the Facility for the Energy Year.

- (e) Contracting Authority shall promptly notify Project Co if (i) Contracting Authority, acting reasonably, approves the Energy Analysis Report or (ii), in Contracting Authority's opinion, all or any aspect of the Energy Analysis Report is not in compliance with the requirements of this Schedule 36 and, in such an event, Project Co shall submit a revised Energy Analysis Report that satisfies the requirements of this Schedule 36 within 30 days of the date of such notice. If Project Co fails to submit such report within 10 Business Days of the expiry of such 30 day period, one or more Energy Failures shall arise and one or more Deductions shall apply in accordance with Section 3.4 (Utilities Management Services) of Part IV of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism.
- (f) In the event that (i) an Energy Failure arises and is continuing, (ii) Contracting Authority applies Deductions pursuant to Section 9.3(b) or Section 9.3(e), and (iii) the events underlying the Energy Failure impact the calculation of a Painshare Adjustment or Gainshare Adjustment pursuant to this Schedule 36, then Contracting Authority, in its sole discretion, may either, upon the provision of notice to Project Co, (A) continue to apply such Deductions in accordance with such Section during the period of time the Energy Failure is continuing, or (B) calculate the applicable Painshare Adjustment or Gainshare Adjustment using a third party consultant retained by Contracting Authority at Project Co's sole cost and expense. Project Co shall, in good faith, cooperate and promptly provide to any such third party consultant all information requested by Contracting Authority or such third party consultant. In the event that Contracting Authority retains any such third party consultant, Contracting Authority shall (I) promptly provide notice to Project Co identifying the third party consultant retained by Contracting Authority and setting out all of the information that the third party consultant requires to calculate the applicable Painshare Adjustment or Gainshare Adjustment, and (II) cease making such Deductions in the Contract Month immediately following the Contract Month within which the third party consultant receives all such information from Project Co to Contracting Authority's satisfaction.
- (g) Any applicable Painshare Adjustment or Gainshare Adjustment related to the period covered by the Energy Analysis Report and the cost of any third party consultant described in Section 9.3(f) shall be directly deducted from or added to, as the case may be, the Monthly Service Payment immediately following the Contract Month when Contracting Authority approves the final report of the third party consultant setting out the applicable Painshare Adjustment or Gainshare Adjustment.

9.4 Content and Format of Energy Analysis Reports

- (a) Each Energy Analysis Report shall present findings of Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for the relevant Energy Year and shall include the following:
 - (i) a summary of actual Energy usage and breakdown by Utility in kilowatt-hours and cubic meters, or other Utility rate units, which shall also highlight any exceptional changes in consumption or pattern of Energy use since any previous Energy Analysis Reports. The actual Energy usage and breakdown by Utility with respect to Energy in the Unit of Energy shall also be included;
 - (ii) accurate and precise Energy consumption data;
 - (iii) the identification of potential cost savings in respect of Energy usage at the Facility. An estimate of potential Energy Service consumption savings broken down by Energy type, implementation costs, Simple Payback periods and projected savings. The identification of potential risks associated with each proposed cost savings measure shall also be included. Project Co shall categorize these cost savings measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures; and
 - (iv) projected Energy usage at the Facility for the next five years and cost projections in respect of such projected Energy usage along with pricing trends and potential risks associated with each.
- (b) Project Co acknowledges that the primary objectives of the Energy Analysis Report are to confirm the Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Facility in the relevant Energy Year and to provide data to Contracting Authority to support Project Co's calculation of the Adjusted Discrete Annual Energy Targets and the Adjusted Annual Energy Target in accordance with Section 6.2(c).
- (c) Project Co shall ensure that each Energy Analysis Report has the following components:
 - (i) a Target Energy Model updated in accordance with Section 6.2;
 - (ii) any requested amendments to the Annual Energy Target and Discrete Annual Energy Targets in accordance with Section 6.3(a) together with a detailed rationale for each such amendment and detailed explanations of any related changes to be made to the Target Energy Model, including to the End User Equipment Ratios and End User Energy;

Thunder Bay Correctional Complex Project

- (iii) a presentation of Actual Consumption, Discrete Energy Service Actual Consumption for each individual Energy Service, the Adjusted Annual Energy Target, and the Adjusted Discrete Annual Energy Targets, and a comparison of Discrete Energy Service Actual Consumption for each individual Energy Service and the Adjusted Discrete Annual Energy Targets with the associated Mandatory Energy Targets;
- (iv) a correlated energy Weather Data graph;
- (v) Utilities data collected by Project Co presented in the table set out in Appendix A to this Schedule 36;
- (vi) a detailed analysis of metered and sub-metered uses of Energy;
- (vii) a detailed description of the operation of the building's systems, including:
 - (A) variable frequency drive operation;
 - (B) air and water economizer and heat recovery cycles;
 - (C) air distribution static pressures and ventilation air volumes; and
 - (D) any other pertinent information regarding system performance as it affects Energy consumption;
- (viii) a report in respect of the total Facility greenhouse gas emissions and greenhouse gas emissions associated with each Energy Service, which shall be calculated by multiplying the Discrete Energy Service Actual Consumption by the Post-Substantial Completion GHG Emissions Factor;
- (ix) an outline of any outstanding issues from any previous Energy Analysis Report;
- (x) a table showing the percentage variation in Actual Consumption against the Adjusted Annual Energy Target, the Adjusted Discrete Annual Energy Targets and the Discrete Energy Service Actual Consumption for each discrete Energy Service;
- (xi) tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy for the previous 12 months;
- (xii) a breakdown of Energy types and costs for each Energy use described in this Schedule 36 and any other major energy use for the previous 12 months;
- (xiii) appendices, which include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report;

- (xiv) summary tables from all previous Energy Analysis Reports delivered by Project Co to Contracting Authority pursuant to this Schedule 36; and
- (xv) the report required by Section 7.3 of Appendix B to this Schedule 36.

10. COMPARING ACTUAL CONSUMPTION OF ENERGY WITH TARGET

10.1 Comparing Annual Energy Target

- (a) After Contracting Authority approves the Energy Analysis Report for each Energy Year pursuant to Section 9.3(e), the Discrete Energy Service Actual Consumption for each Energy Service shall be compared to the Adjusted Discrete Annual Energy Targets for each Energy Service, and:
 - (i) if the Discrete Energy Service Actual Consumption in respect of any discrete Energy Service is greater than [REDACTED]% of the Adjusted Discrete Annual Energy Targets in respect of such Energy Service then Project Co shall calculate the Painshare Adjustment set out in Section 11.1(b) and credit Contracting Authority’s Monthly Service Payments accordingly in accordance with Schedule 20 - Payment Mechanism; or

Illustration

[REDACTED]

- (ii) if the Discrete Energy Service Actual Consumption in respect of any Energy Service is less than [REDACTED]% of the Adjusted Discrete Annual Energy Targets in respect of such Energy Service, then Project Co shall calculate the Gainshare Adjustment set out in Section 11.1(b).

Illustration

[REDACTED]

- (b) If Project Co is subject to a Painshare Adjustment with respect to an Energy Year, then Project Co shall submit a detailed remediation plan to Contracting Authority within 14 days of the calculation of the Painshare Adjustment to explain how it will reduce the relevant Discrete Energy Service Actual Consumption such that it will not exceed the [REDACTED]% threshold established in Section 10.1(a)(i) for the subsequent Energy Year. If Project Co is not successful in its remediation plan such that the Painshare Adjustment in Section 10.1(a)(i) is applied with respect to such Discrete Energy Service Actual Consumption for such Energy Year, then the Painshare Adjustment set out in Section 11.1(b) will apply.

11. CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT

11.1 [REDACTED]

12. CALCULATION OF DISCRETE AVERAGE UNIT COST

12.1 [REDACTED]

13. APPLICATION OF GAINSHARE OR PAINSHARE ADJUSTMENT

13.1 Where it is established in accordance with Sections 10 and 11 that a Gainshare Adjustment or a Painshare Adjustment arises pursuant to Sections 10 and 11, the relevant net adjustment shall be given effect by way of (in the case of a Gainshare Adjustment) an increase to a Monthly Service Payment equal to the amount of the Gainshare Adjustment or (in the case of a Painshare Adjustment) by way of a decrease to a Monthly Service Payment equal to the amount of the Painshare Adjustment. In each case the relevant Monthly Service Payment to be adjusted shall be that which is due in respect of the Contract Month in which it is established that the relevant adjustment is required. In the event that a relevant adjustment arises in respect of the final Contract Year, the adjustment shall be made to the final Monthly Service Payment.

14. EXCESSIVE ENERGY CONSUMPTION

14.1 Subject to Section 14.3, Project Co shall not intentionally materially alter the proportions of the types of Energy consumed at the Facility from the proportions set out in the Target Energy Model without the prior approval of Contracting Authority.

14.2 Subject to Section 14.3, if (a) the proportions of the types of Energy consumed at the Facility are different from the proportions set out in the Target Energy Model, (b) the consumption of any specific type of Energy at the Facility increases and exceeds the corresponding Discrete Annual Energy Target by greater than [REDACTED]%, and (c) such increase in consumption is the result of any change made to the operation of the Facility by Project Co without Contracting Authority's prior approval, any resulting increase in (i) the cost to Contracting Authority of purchasing Energy under any Energy Utility Agreement or of reimbursing Project Co for the cost of paying for such Energy pursuant to the Project Agreement, or (ii) any Gainshare Adjustment under this Schedule 36, shall result in a reduction to the Monthly Service Payments paid to Project Co under the Project Agreement.

14.3 Section 14.2 shall not apply if and to the extent that the difference in the proportions of the types of Energy consumed at the Facility from the proportions set out in the Target Energy Model and the increase in consumption of any specific type of Energy described in such Section are a direct result of a Variation or from an increase or decrease in Contracting Authority's requirements for usage of a particular type of Energy at the Facility, for example, because of an increase in the amount of End User Energy at the Facility that

results in an increase in the use of Utilities which, in turn, changes the overall percentage mix of Energy usage.

15. INTELLECTUAL PROPERTY OWNERSHIP AND LIABILITIES

- 15.1 The Parties acknowledge and agree that the provisions of Article 48 (Intellectual Property) of the Project Agreement shall apply in respect of the LEED Proposed Building Energy Model and all Project Energy Models, Energy Analysis Reports and Monthly Energy Reports delivered to Contracting Authority pursuant to this Schedule 36.
- 15.2 Project Co acknowledges and agrees that Contracting Authority shall not be liable to Project Co for, and Project Co shall not seek to recover from Contracting Authority or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the LEED Proposed Building Energy Model, the Project Energy Models, the Energy Analysis Reports or the Monthly Energy Reports.

APPENDIX A

UTILITIES DATA

Total Energy Summary	Adjusted Discrete Annual Energy Targets		Actual Consumption		Discrete Energy Service Actual Consumption		Percent Variance between vi and ii	Painshare Adjustment or Gainshare Adjustment
	Usage (Units of Energy)	Adjusted Cost Target for Energy Year (calculated based on Adjusted Discrete Energy Annual Targets multiplied by Discrete Average Unit Cost)	Usage (Units of Energy)	Cost for Energy Year	Usage (Units of Energy)	Cost for Energy Year (for each of the discrete Energy multiplied by average unit cost of each such discrete Energy)		
	i	ii	iii	iv	v	vi	vii	viii
Electricity								
Natural Gas								
Fuel Oil / Other								
Aggregate sums Units of Energy	[To include Annual Energy Target]		[Actual Consumption: •]		[Discrete Energy Service Actual Consumption: •]			

APPENDIX B**ENERGY PROTOCOL****1. PROTOCOL OBJECTIVES**

- 1.1 Contracting Authority and Project Co seek to minimize Energy usage and costs within the parameters described in the Project Agreement through the design, construction, operation and efficient occupancy of the Facility.

2. UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE

- 2.1 Project Co shall provide Energy monitoring and management services to Contracting Authority in accordance with this Appendix B.
- 2.2 A joint working group responsible for the management of this Schedule 36 (the “**Utilities Management Subcommittee**”) shall convene a meeting each calendar quarter (the “**Quarterly Monitoring Meeting**”) throughout the Operational Term, and shall, amongst other things, analyze, review and discuss the Energy monitoring and record taking carried out by Project Co under this Schedule 36 in order to ensure the Facility’s Energy efficient and continued optimum performance.
- 2.3 The Utilities Management Subcommittee shall be composed of three representatives nominated by Project Co and three representatives nominated by Contracting Authority. Project Co shall ensure that representatives of the Service Provider attend the Quarterly Monitoring Meetings.
- 2.4 Project Co shall propose to Contracting Authority a detailed format and agenda for each Quarterly Monitoring Meeting at least 10 Business Days prior to such meeting, which format and agenda shall be subject to the approval of Contracting Authority, acting reasonably. Attachment 1 to this Appendix is an example of a form of agenda that Project Co may propose to Contracting Authority.
- 2.5 At the start of each Quarterly Monitoring Meeting, the Parties’ representatives on the Utilities Management Subcommittee shall appoint one of their number to act as chairperson, ensuring that the position is held by a Project Co representative and then a Contracting Authority representative on an alternating basis.
- 2.6 In connection with Project Co’s ongoing Energy monitoring, Project Co shall, prior to each Quarterly Monitoring Meeting, provide to the Utilities Management Subcommittee quarterly projections for the consumption of Energy at the Facility for the 12 months following such meeting. Such projections shall be discussed at the Quarterly Monitoring Meeting and will be used by Contracting Authority for financial planning purposes.
- 2.7 Without limitation or prejudice to Project Co’s obligations in the Project Agreement, prime Energy usage monitoring must be undertaken by Project Co on a Utility by Utility basis at each Metering Location, the results of which must be data logged for review on a monthly

- basis and at each Quarterly Monitoring Meeting.
- 2.8 Prior to each Quarterly Monitoring Meeting, Project Co shall review and evaluate monthly and quarterly Energy consumption at the Facility, including to identify any deviations from Energy consumption trends in the same month or quarter in past years during the Operational Term. Each deviation shall be logged as:
- (a) deficient maintenance requiring rectification;
 - (b) external influences outside of Project Co's or any Project Co Parties' control (e.g. abnormal weather conditions);
 - (c) deviations resulting from a Variation;
 - (d) incidences of misuse of Energy by Contracting Authority or any Province Person;
or
 - (e) incidences of misuse of Energy by Project Co or any Project Co Party.
- 2.9 Project Co shall present the deviations described in Section 2.8 to Contracting Authority at the upcoming Quarterly Monitoring Meeting where the Parties shall, without limiting any right or obligation of a Party under the Project Agreement, seek to identify and agree upon any actions to be undertaken to remedy the cause or magnitude of such deviations.
- 2.10 At each of the Quarterly Monitoring Meetings, Project Co will report on Scheduled Maintenance, Unscheduled Maintenance and Emergency Maintenance Work undertaken and being undertaken relevant to Energy consumption at the Facility to ensure the best possible operating efficiencies for the Facility, and the Utilities Management Subcommittee will review and provide feedback on such report.
- 2.11 Project Co shall update and alter the Scheduled Maintenance following receipt of feedback from the Utilities Management Subcommittee.
- 2.12 Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews in respect of the Facility to ascertain whether minor design alterations, technology changes or other technological enhancements will benefit lifecycle costings and further improve Energy performance of the installations to the joint and equal benefit of the Parties. Contracting Authority may, but shall not be obliged to, invoke the Variation Procedure in accordance with Schedule 22 - Variation Procedure to the Project Agreement, as a result of any such review.
- 2.13 Project Co, acting through the Utilities Management Subcommittee, will advise Contracting Authority in relation to the following measures, which it will expect Contracting Authority and Contracting Authority Parties to implement, and Project Co shall implement and shall ensure that Project Co Parties implement the same:
- (a) control and efficient use of space heating and cooling;

Thunder Bay Correctional Complex Project

- (b) control and efficient use of lighting;
- (c) control and efficient use of hot water;
- (d) control and efficient use of plugged-in equipment;
- (e) any energy awareness campaigns; and
- (f) all other relevant Energy consumption advice.

3. INITIAL MONITORING

- 3.1 Throughout the Initial Period, Project Co shall ensure that all necessary Energy management procedures and Energy optimization initiatives are undertaken in accordance with this Appendix B.
- 3.2 Promptly following the Initial Period, Project Co shall submit a report to Contracting Authority demonstrating that during the Initial Period the Facility's systems were optimized to operate at peak efficiencies and that all Energy reduction techniques designed and included within the Project have been implemented in accordance with the Project Agreement.

4. MONTHLY ENERGY MEASUREMENT AND REPORTING SERVICES

- 4.1 In respect of each Contract Month during the Operational Term, Project Co shall, within 5 Business Days of the expiry of such Contract Month, deliver to Contracting Authority a monthly report in respect of the Energy consumption and efficiency of the Facility during such month (each a "**Monthly Energy Report**").
- 4.2 No later than 365 days prior to the Scheduled Substantial Completion Date, the Parties shall, acting reasonably, agree to the form of Monthly Energy Report to be used during the Operational Term. Upon agreement of the Parties, acting reasonably, the form of Monthly Energy Report may be changed from time to time.
- 4.3 Each Monthly Energy Report shall, at a minimum:
 - (a) confirm the effectiveness and accuracy of the Energy metering and sub-metering at the Facility;
 - (b) set out the total Energy consumption at the Facility during the applicable Contract Month at each of the Metering Locations;
 - (c) set out and provide a summary of the Actual Consumption and Discrete Energy Service Actual Consumption in respect of each type of Energy consumed at the Facility during the applicable Contract Month, which shall be expressed as Units of Energy. End User Energy and Facility Energy shall be set out separately in such summary;

Thunder Bay Correctional Complex Project

- (d) compare the Energy consumption at the Facility with the Mandatory Energy Targets, the Discrete Energy Targets and the Annual Energy Targets;
- (e) include and summarize data on the thermal efficiency of the Facility’s entire plant and equipment and the operational efficiency of its distribution systems to ensure its continued optimum performance; and
- (f) include trend analysis that will indicate malfunctions at the Facility.

5. ENERGY MONITORING

- 5.1 All Energy supplied to and used within the Facility shall be monitored and data logged using the building management system and metering and sub-metering system, capable of presentation in spreadsheet format for verification by Contracting Authority.
- 5.2 Project Co shall proactively monitor and evaluate Energy consumption patterns at the Facility on an ongoing basis.
- 5.3 Project Co shall identify occurrences of unusual or unexpected high Energy consumption at the Facility and shall promptly identify and investigate the cause.
- 5.4 Project Co shall obtain external temperature profiles from the Environment Canada local weather office and the building management system. The temperature profiles will be used to assist in the evaluation of quarterly energy trends particularly in the event that extreme summer or winter temperatures. The Environment Canada local weather office data will be the prime source of Weather Data. Any trends in climate change will be noted and included in the Monthly Energy Reports.

6. COMPLIANCE

- 6.1 Contracting Authority is entitled from time to time to appoint an energy consultant of its choice and at its cost to monitor and check Project Co’s compliance with the provisions of this Appendix B. Project Co must co-operate with any such consultant and must allow it access to the Facility, all energy records and all facilities management maintenance data as such consultant may reasonably require.

7. CONTRACTING AUTHORITY AND PROJECT CO’S UNDERTAKINGS

- 7.1 Contracting Authority shall assist, and shall encourage the Contracting Authority Parties to assist, Project Co to achieve the Energy consumption targets described in this Schedule 36 through the adoption of good housekeeping techniques, to be determined by the Utilities Management Subcommittee in respect of lighting, water, office equipment and space heating and air conditioning, to be achieved through management and involvement of Contracting Authority staff. Contracting Authority will ensure that Contracting Authority Parties involve management in energy efficiency focus in order to incorporate good practice as part of Contracting Authority and Contracting Authority Parties’ overall activities.

Thunder Bay Correctional Complex Project

- 7.2 Contracting Authority and Project Co recognize that the Energy consumption targets described in this Schedule 36 can only be achieved with the co-operation of their staff and therefore respectively undertake that their commitment to and the commitment of Contracting Authority staff and Project Co staff, service providers and other relevant parties (as the case may be) to energy efficiency will be adopted throughout their respective organizations, to ensure that staff are aware of and have been encouraged to practice the energy saving policy so that Contracting Authority, Contracting Authority staff, Project Co and Project Co staff, service providers and other relevant parties will prevent excessive Energy usage. This will include without limitation:
- (a) providing their respective staff with information about why Energy conservation is important, describing practical and environmental benefits;
 - (b) stressing that most Energy is used by building occupants;
 - (c) informing staff of the minimum legal/design operation temperature requirements;
 - (d) including energy efficiency briefing within staff familiarization, training and new staff inductions;
 - (e) switching off equipment not in use or not required, including discouraging the leaving of equipment in standby mode where technically appropriate;
 - (f) sharing departmental Energy use information with departmental managers;
 - (g) obtaining feedback from staff on measures to improve energy efficiency;
 - (h) appointing departmental/unit managers, and energy monitors to implement good housekeeping measures as set out in Section 7.1; and
 - (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements.
- 7.3 Project Co shall, with input from Contracting Authority and Contracting Authority staff, produce a report in respect of each Energy Year summarizing the above measures and including recommendations and suggestions received to enhance energy efficiency at the Facility, which shall be included in each Energy Analysis Report.
- 7.4 Any specific Project Co Service specification documents shall be amended to reflect any changes to the organization and management of energy services agreed by Parties through the Utilities Management Subcommittee.
- 7.5 Contracting Authority shall, at each Quarterly Monitoring Meeting, advise the Utilities Management Subcommittee of any departmental operational changes, which may affect Utilities usage. This would include changes to the assumptions on which Project Co's original Energy consumption figures in the Target Energy Model were calculated, including, material increases in occupancy levels, department opening times and

equipment levels.

- 7.6 Project Co shall undertake regular value management reviews for the services installations to ascertain whether minor design alterations, involving use of in-house resources, technology changes or other technological enhancements will benefit lifecycle costings and further improve Energy performance of the installations. Any outputs of such value management exercises, which have the support of the Utilities Management Subcommittee, will be considered by Project Co and Contracting Authority at the Facilities Management Committee, which will then ascertain whether minor capital works are needed to continue to ensure best possible performance targets are achieved. Should work be required to increase energy efficiency then this will be dealt with through the Variation Procedure.

**ATTACHMENT 1
QUARTERLY MONITORING MEETING AGENDA**

Meeting Title: Quarterly Monitoring Meeting of the Utilities Management Subcommittee for the period

Date of Meeting:

Venue:

Those Present:

Project Co Representatives
Contracting Authority Representatives
Representative of the Service Provider

Item 1

Apologies for absence

Item 2

Recorded energy consumption for the quarter

Heating
Water:

Chilled
Water:

Steam:

Gas:

Electric:

Fuel Oil:

Water:

Contracting Authority Integrated Services Metering Points:

Contracting Authority Existing Steam Load Metering Points:

Other Metering Points:

Thunder Bay Correctional Complex Project

- Item 3** Report on Weather Data for corresponding period
- Item 4** Variations pursuant to Schedule 22 - Variation Procedure
- Item 5** Actual Energy consumption compared against target
- Item 6** Review Painshare Adjustment and Gainshare Adjustment mechanisms
- Item 7** Report on Procedures
- Item 8** Report on plant and systems performance and review of future planned maintenance program
- Item 9** Review of energy trends and recommendations for improved energy efficiency and training
- Item 10** Asset management and lifecycle issues
- Item 11** New technologies and issues for consideration under ongoing value engineering
- Item 12** Rolling 12 month annual Energy totals
- Item 13** Disputes subject to Schedule 27 - Dispute Resolution Procedure
- Item 14** AOB and date of next meeting

APPENDIX C

SAMPLE METERING LOCATION SUMMARY TABLE

[REDACTED]

APPENDIX D**PROJECT ENERGY MODELS REQUIREMENTS****1. GENERAL REQUIREMENTS FOR PROJECT ENERGY MODELS****1.1 Approved Software Requirements for Project Energy Models**

- (a) The Project Energy Models must be consistent with the requirements of the LEED BD+C v4 Reference Guide and associated reference materials.
- (b) Only EnergyPlus or IES-VE software is to be used for the Project Energy Models. If at any time following Financial Close, any of the Project Energy Models cannot be updated because such software is no longer supported or reasonably available, Project Co and Contracting Authority, each acting reasonably, shall agree to an equivalent or better software and the applicable Project Energy Model shall be recreated by a third party consultant using input data that matches the data used to create the original Project Energy Model. The cost associated with any such third party consultant shall be shared equally between Project Co and Contracting Authority.
- (c) For simulation purposes only, no zone is permitted to have unmet heating or cooling load hours in excess of 100 hours per year (excluding zones with no cooling requirements).
- (d) For the purpose of building enclosure modeling, the Project Energy Models shall be consistent with the Toronto Green Standard v3 Energy Modeling Guidelines Version V3 (including the requirements outlined in Section “5.5 Calculating Envelope Heat Loss” therein).

1.2 Take-Offs

Outside dimensions of exterior walls shall be used for determining building areas. Wall heights shall be full floor-to-floor height. Window areas shall represent the total area of the rough opening.

1.3 Direct Output

- (a) Subject to Section 1.3(b), no calculations or other factors applied outside of the modeling software identified in Section 1.1(b) shall be permitted to modify the results of any of the Project Energy Models, including to the Discrete Annual Energy Targets, each of which must be less than or equal to the associated Mandatory Energy Target, and the Annual Energy Target.
- (b) At any time between the date of the Project Agreement and the date Project Co submits its last 100% Design Development Submittal pursuant to Schedule 10 – Review Procedure, in the event that the modeling software identified in Section

1.1(b) has technical limitations and Project Co wishes to update the Project Energy Models to apply calculations or other factors outside of such modeling software that modify the results of the Project Energy Models in order to overcome such limitations (but not to improve the accuracy of such modeling software), then, Project Co may request in writing the consent of Contracting Authority to carry out such update to the Project Energy Models, which consent may not be unreasonably withheld, provided that no update will be permitted if it modifies any of the Discrete Annual Energy Targets and the Annual Energy Target. As part of any such written request, Project Co shall provide the following to Contracting Authority:

- (i) a detailed explanation of the software’s technical limitations;
- (ii) two versions of each of the Project Energy Models with and without a workaround to each of the limitations;
- (iii) a narrative demonstrating the impact of the each of the limitations and the assumptions, inputs and methodologies that will need to be employed to overcome such limitation; and
- (iv) confirmation that the proposed update will not modify any of the Discrete Annual Energy Targets and the Annual Energy Target.

1.4 Conformance with ASHRAE 55

- (a) ASHRAE 55 compliance verification is required with the submission of each Major Energy Submission Package.
- (b) In order to determine the conformance of the Facility’s design with ASHRAE 55, the Project Energy Model outputs for temperature and humidity shall be graphed in accordance with the most recent version of the ASHRAE 55 standard, which shall be used to determine the appropriate method for calculating “Operative Temperature”.
- (c) Project Co shall provide a graph for key spaces to be regularly occupied, including at minimum one housing unit dayroom, one inmate cell, one centralized program classroom, one contact visits room and one closed office space to demonstrate compliance.

2. SPECIFIC REQUIREMENTS OF PROJECT ENERGY MODELS

2.1 Weather

- (a) Prior to Substantial Completion, the selected location for calculations involving weather shall be the Thunder Bay Airport, Ontario, and the most recent version of the associated CWEC weather file shall be used as provided by Environment Canada (i.e., CWEC 2016). Contracting Authority will review the HDD/CDD number for verification purposes.

Thunder Bay Correctional Complex Project

- (b) After Substantial Completion, actual Weather Data shall be determined as set out in Section 6.2(b).
- (c) The extreme outdoor design day temperatures shall be -28.9°C winter and 29.2°C / 20.2°C db/wb summer.

2.2 Temperature Set Point Schedules

- (a) Cooling thermostat set-point schedules for all zones are to be as set out in Section 2.2.2.6 - Thermal Comfort of Part III of Schedule 15 – Output Specifications, and Part IV - FMOS Definitions of Schedule 15 – Output Specifications.
- (b) Temperature set-points used in the Project Energy Models shall match the temperature set-points and temperature control tolerance set out in Section 2.2.2.6 - Thermal Comfort of Part III of Schedule 15 – Output Specifications, and Part IV - FMOS Definitions of Schedule 15 – Output Specifications.
- (c) Zones without cooling should be modeled with a cooling thermostat set-point schedule set to 99°C for all hours.
- (d) Where modeled zones contain spaces with different cooling set-points (based on the above requirements), the zone shall be modeled using the set-point for the space requiring the lowest set-point temperature.
- (e) Where modeled zones contain spaces with different heating set-points (based on the above requirements), the zone shall be modeled using the set-point for the space requiring the highest set-point temperature.

2.3 Lighting and Occupancy

- (a) Lighting requirements shall be based on the space function defined in the Output Specifications.
- (b) Occupancy and hours of operation shall be as indicated in Appendix F to this Schedule 36.

2.4 End User Energy

- (a) Prior to Substantial Completion, End User Energy shall be as set out in Appendix F to this Schedule 36.

APPENDIX E
TARGET ENERGY MODEL AND LEED PROPOSED BUILDING ENERGY MODEL
PART A – LEED PROPOSED BUILDILNG ENERGY MODEL

[REDACTED]

PART B – TARGET ENERGY MODEL

[REDACTED]

APPENDIX F

PROJECT ENERGY MODELS
PROGRAM SUMMARY AND SCHEDULES WORKBOOK

[REDACTED]

APPENDIX G

ENERGY TARGET LETTER

[REDACTED]

APPENDIX H**MAJOR ENERGY SUBMISSION PACKAGES**

Each Major Energy Submission Package shall include the following documents and other deliverables, each of which shall satisfy the applicable requirements of the Project Agreement, including Schedule 15 – Output Specifications and this Schedule 36:

- (a) the Target Energy Model, which, if applicable, shall be updated in accordance with Section 6.1 or Section 6.2;
- (b) an up to date Current Conditions Energy Model;
- (c) an up to date LEED Proposed Building Energy Model;
- (d) a completed worksheet in the form set out in Appendix I to this Schedule 36. Inputs to such worksheet shall include Energy and Energy-cost end-use breakdowns by fuel for the Project Energy Models, total conditioned area and exterior areas of the Project and annual renewable electricity generated by on-site renewable electricity sources provided under the Project Agreement. Such worksheet shall be used to calculate the Total Energy Use Intensity, Thermal Energy Demand Intensity, and Greenhouse Gas Emissions Intensity;
- (e) a completed table in the form set out in Table A-1 to this Appendix H, which summarizes the applicable outputs of the LEED Proposed Building Energy Model and the Project Energy Models;
- (f) an up to date completed table in the form of the sample metering location summary table set out in Appendix C to this Schedule 36, which reflects the design necessary to meet the Metering Requirements and the metering system installed or to be installed at the Facility. The categorization of metering points shall correspond with the categories outlined in Table A-1 to this Appendix H, such that all metering and sub-metering points can be allocated to one of the desired end-use breakdown components of each of the Project Energy Models;
- (g) a narrative setting out all primary Energy features included in the Project Energy Models and illustrating the Energy saving measures that have been incorporated into the Facility's design;
- (h) a written statement of how Project Co will operate the Facility to ensure the Energy saving measures in the design realize their full potential;
- (i) a detailed explanation of any errors or warnings generated by the Energy modeling software;
- (j) a detailed explanation of modeling strategies and methodology;

Thunder Bay Correctional Complex Project

- (k) HVAC system details (e.g. shop drawings, cut-sheets, performance curves, etc.) and controls sequences implemented in the Project Energy Models;
- (l) a lighting load table indicating the installed lighting power density in W/m², by space type, and overall building lighting power density for the Project Energy Models;
- (m) full disclosure of any exceptions to the LEED Proposed Building Energy Model, including:
 - (i) a rationale for why the modeling requirements could not accurately model the specific design solution;
 - (ii) the calculation used for the exception; and
 - (iii) a description of how the exception impacts the model results;
- (n) zoning diagrams clearly highlighting each zone in a different colour;
- (o) a LEED Online credit form/calculator for EA prerequisite Minimum Energy Performance/EA credit Optimize Energy Performance;
- (p) a completed outdoor air calculations spreadsheet;
- (q) documentation demonstrating how ASHRAE 62.1 and ASHRAE 55 requirements have been satisfied;
- (r) confirmation that all mandatory requirements for the energy code reference used for any LEED submission (e.g. ASHRAE 90.1 or NECB) have been satisfied;
- (s) 30 year NPV calculations using Excel's XNPV formula and the unit energy prices listed in Table A-1, showing monthly Energy use and costs based on the Target Energy Model;
- (t) electronic simulation files for all energy modelling programs used; and
- (u) up to date credentials of the energy modeler, demonstrating his or her experience in modeling and any relevant certifications or accreditations (e.g. P. Eng, BEMP, CMVP, etc.).

TABLE A-1

**LEED PROPOSED BUILDING ENERGY MODEL AND
PROJECT ENERGY MODELS SUMMARY REPORT**

[REDACTED]

APPENDIX I

MANDATORY ENERGY PERFORMANCE TARGET CALCULATOR

[REDACTED]

SCHEDULE 37

[INTENTIONALLY DELETED]

SCHEDULE 38**REPORTS**

For the purpose of the Project Agreement, the following terms shall have the following meanings:

1. **“Archaeological Reports”** means, collectively:
 - (a) “Stage 1 & 2 Archaeological Assessment - Infrastructure Ontario, Thunder Bay Correctional Centre (N01559) – Expansion Building, 2351 Hwy 61 South, Part of Lot 24, Concession 4 South of Kaministiquia River Geographic Township of Neebing, City of Thunder Bay, District of Thunder Bay” dated December 2020 and prepared for Infrastructure Ontario and The Ontario Ministry of Heritage, Sport, Tourism and Culture Industries by Timmins Martelle Heritage Consultants Inc.;
 - (b) “Stage 1 & 2 Archaeological Assessment - Infrastructure Ontario, Thunder Bay Correctional Centre (N01559), 2351 Hwy 61 South, Part of Lots 22 to 24, Concession 4, South of Kaministiquia River, Geographic Township of Neebing City of Thunder Bay, District of Thunder Bay”. Originally dated July 2018, revised January 14, 2019. Filed with the Ministry of Heritage, Sport, Tourism and Culture Industries and accepted into the provincial register of reports on January 24, 2019; and
 - (c) “Stage 1 & 2 Archaeological Assessment - Infrastructure Ontario, Thunder Bay Correctional Centre (N01559), 2351 Hwy 61 South, Part of Lots 23 to 25, Concession 4 South of Kaministiquia River, Part of Lots 23 and 24, Concession 5 South of Kaministiquia River Geographic Township of Neebing, City of Thunder Bay, District of Thunder Bay” dated October 2020 and prepared for Infrastructure Ontario and The Ontario Ministry of Heritage, Sport, Tourism and Culture Industries by Timmins Martelle Heritage Consultants Inc.,

and, individually, each is an **“Archaeological Report”**.

2. **“Environmental Reports and Designated Substance Reports”** means, collectively:
 - (a) “Phase One Environmental Site Assessment - Thunder Bay Correctional Centre (TBCC) N01559, Thunder Bay, Ontario” dated January 2021 and prepared for Infrastructure Ontario by DST Consulting Engineers Inc.;
 - (b) “Phase Two Environmental Site Assessment - Thunder Bay Correctional Centre, Thunder Bay, Ontario” dated March 2 2021 and prepared for Infrastructure Ontario by DST Consulting Engineers Inc.;
 - (c) “Screening-Level Risk Assessment of Thunder Bay Correctional Centre, P3 Project, 2351 Highway 61, Thunder Bay, Ontario” dated February 24, 2021 and prepared for DST Consulting Engineers Inc by Intrinsik;

Thunder Bay Correctional Complex Project

- (d) Phase Two Environmental Site Assessment - Thunder Bay Correctional Centre – Intermittent Centre Thunder Bay, Ontario - Final, dated December 2020, prepared for Infrastructure Ontario by DST Consulting Engineers Inc.; and
- (e) Intrinsic Screening-Level Risk Assessment of Thunder Bay Correctional Centre, Intermittent Centre, 2351 Highway 61, Thunder Bay, Ontario, dated November 23, 2020, prepared for DST Consulting Engineers Inc. by Intrinsic,

and, individually, each is an “**Environmental Report and Designated Substance Report**”.

3. “**Geotechnical Reports**” means, collectively:

- (a) “Geotechnical Investigation and Design Report - Thunder Bay Correctional Center (TBCC) Thunder Bay, Ontario (N01559)” dated February 2021 and prepared for Infrastructure Ontario by DST Consulting Engineers Inc.;
- (b) “Preliminary Geotechnical Investigation - Thunder Bay Correctional Centre, Thunder Bay, Ontario” dated September 14, 2018 and prepared for Infrastructure Ontario by DST Consulting Engineers Inc.; and
- (c) Final Geotechnical Investigation and Design Report - Thunder Bay Correctional Center (TBCC) – Expansion Building, Thunder Bay, Ontario (N01559), dated January 2021, prepared for Infrastructure Ontario by DST Consulting Engineers Inc.,

and, individually, each is a “**Geotechnical Report**”.