

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, AS AGENT FOR HER  
MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**and**

**ACCESS JUSTICE DURHAM LTD.**

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**PROJECT AGREEMENT  
(REDACTED VERSION)**

Design, Construction and Facilities Management  
of the Durham Consolidated Courthouse

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**Dated March 1, 2007**

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**THIS AGREEMENT** is made the 1<sup>st</sup> day of March 2007.

**BETWEEN:**

1. **ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, AS AGENT FOR HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“HMQ”)** and
2. **ACCESS JUSTICE DURHAM LTD.**, a corporation incorporated under the laws of Ontario and whose registered office is situated at 79 Wellington Street West, Suite 1500, Maritime Life Tower, P.O. Box 114, Toronto-Dominion Centre, Toronto, ON M5K 1G8 (“**Project Co**”).

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereby agree as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### 1.1 Definitions in Schedules

Certain words and expressions used exclusively or mainly in or for the purposes of particular Schedules forming part of this Agreement are defined within those Schedules. Such definitions shall apply, unless the context otherwise requires, in all other parts of this Agreement (whether or not Section 1.2 below contains a cross-reference to such definitions).

### 1.2 Definitions

In this Agreement (including the recitals and Schedules), unless the context otherwise requires, the following words and expressions have the following meanings:

“**A/V Equipment**” has the meaning ascribed to it in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.

“**A/V Systems**” has the meaning ascribed to it in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.

“**Adjudicator**” means the person to be appointed in accordance with the Dispute Resolution Procedure;

“**Adjusted Fair Value of the Agreement**” has the meaning given in **Schedule G (Calculation of Termination Payments)**;

“**Adjusted Highest Qualifying Tender Price**” has the meaning given in **Schedule G (Calculation of Termination Payments)**;

“**Affected Party**” has the meaning given to it in Section 38.1(a) (Force Majeure);

“**Affiliate**” has the meaning ascribed to it in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of the Shareholders;

“**Affiliated Person**” means:

- (a) an Affiliate of any of Project Co, the Service Provider, the Construction Subcontractor, the Subcontractors or other Project Co Parties or the Shareholders;
- (b) any partner in any partnership or any person who participates in any profit sharing, cost-sharing or joint venture arrangement, in each case to which any of Project Co, the Service Provider, the Construction Subcontractor, other Project Co Parties or the Shareholders or any person mentioned in item (a) of this definition of “Affiliated Person” is also a party;
- (c) any shareholder, director, officer or employee of any of the persons referred to in items (a) and (b) of this definition of “Affiliated Person” or any of those persons’ spouses, children, step-children or partners; or
- (d) any body corporate of which any person referred to in item (c) of this definition of “Affiliated Person” is a shareholder, director, officer or employee;

“**Agreed Contingency Amount**” has the meaning given in Section 2.19(a) (Performance Generally);

“**Agreement**” means this Agreement as concluded between HMQ and Project Co on the Date of Agreement including all recitals, schedules, annexes and appendices, plans, specifications and drawings attached thereto, together with any amendments agreed to by HMQ and Project Co in accordance with Section 51.10 (Amendments in Writing);

“**Agreement Term**” means the period specified in Section 3.2 (Formation and Duration of the Agreement);

“**Aggregate Energy Target**” or “**AET**” has the meaning ascribed to it in **Schedule M (Energy Matters)**;

“**Ancillary Documents**” means the Construction Subcontract, the Operating Subcontract and the Co-ordination Agreement;

“**Annual Reconciliation**” means the meaning ascribed to it in Section 13.13(g).

“**Annual Revenue Sharing Amount**” has the meaning ascribed to it in Section 13.13(g).

“**Annual Service Payment**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Applicable Law**” means any applicable:

- (a) statute, laws, bylaws or proclamation or any delegated or subordinate legislation including regulations;
- (b) judgment of a relevant court of law which is a binding precedent in the Province of Ontario;

(c) ordinance, order, direction, directive, policy, guideline or rule of or by any Governmental Authority having the force of law; and

(d) judgment of a relevant court of law, board, arbitrator or administrative agency,

in each case in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party or any Province Person, as applicable;

“**As Built Drawings**” means drawings relating to design of the Project Facilities prepared by Project Co in a format and with content and details that HMQ, acting reasonably, considers appropriate and includes drawings that reflect the differences to the architectural and mechanical drawings set forth in the HMQ Design Requirements;

“**Asset Register**” has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Audit Team**” means the Auditor General of Ontario or any successor to the Auditor General, or other auditor or similar body appointed by HMQ to exercise the rights of audit referred to in Article 46 (Project Co’s Records) or who are entitled as a matter of law to exercise rights of audit in connection with this Agreement or matters arising hereunder;

“**Authority**” means any federal, provincial, regional, municipal or local governmental body or any subdivision, commission, board, court, bureau, instrumentality, administrative agency, official or other authority thereof in Canada;

“**Background Check Requirements**” means those requirements set forth in **Schedule H (Background Check Requirements)**;

“**Base Date**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Base Case Equity IRR**” means [REDACTED]%;

“**Benchmarking**” means the process described in Article 49 (Benchmarking), including the Benchmarking Exercise;

“**Benchmarking Exercise**” has the meaning given in Section 49.1 (Benchmarking);

“**Benchmark Price**” means the range of prices that is within [REDACTED]% less than and [REDACTED]% greater than the simple average of prices for the relevant Market Tested Services obtained from the suitable comparators as part of a Benchmarking Exercise conducted hereunder, once adjustments have been made to make such comparators comparable, including adjusting for standards, as agreed by HMQ and Project Co, provided however that the higher limit of such range shall not exceed the highest of the suitable comparators;

“**Benchmarking Proposal**” has the meaning given in Section 49.3(a) (Benchmarking);

“**Beneficiary**” has the meaning given in Section 19.8(a) (Representations, Warranties and Indemnity);

“**Building Code**” means the regulations made under Section 34 of the *Building Code Act*, 1992 (Ontario).

“**Business Day**” means a day on which the offices of the Government of Ontario are open generally for the conduct of public business, but it is understood that the following days shall not be considered “Business Days”:

- (a) every Saturday or Sunday;
- (b) the public holidays of New Year’s Day, Good Friday, Easter Monday, Victoria Day, Canada (Dominion) Day, the August Civic Holiday (Simcoe Day), Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and Boxing Day;
- (c) any other day proclaimed as a public holiday by the Lieutenant Governor of Ontario or the Governor General of Canada; and

when any of the public holidays set out in paragraph (b), other than Remembrance Day, falls on a Saturday or a Sunday, the following Monday shall be deemed to be a public holiday in its place, provided that where Christmas Day falls on a Saturday or Sunday, Boxing Day shall be deemed to be the Tuesday immediately following Christmas Day;

“**CAD Standards**” means the most recent version of Ontario Realty Corporation’s Computer Automated Drafting Standards (ORC CAD Standards March 2006) developed in connection with the design of the Project Facilities;

“**CaGBC**” means the Canada Green Building Council;

“**Capital Expenditure**” means any expenditure which falls or would fall to be treated as capital expenditure in accordance with GAAP;

“**Cash**” means cash on hand and deposits repayable on demand with any bank or other financial institution and includes cash in hand and deposits in foreign currencies;

“**Change**” means any of the following:

- (a) any modification, variation, addition, reduction, substitution, omission, deletion, removal or other change to the whole or any part of the Project Works (as modified or amended prior to such change by the Design and Construction Procedure or by Article 10 (Changes in Project Works or Service Period Works)) that the Independent Certifier agrees will legitimately increase or decrease the costs of Project Co completing the Project Works or will cause material delay to Project Co in completing the Project Works prior to the Completion Date;
- (b) any modification, variation, addition, reduction, substitution, omission, deletion, removal or other change to the whole or any part of the Service Period Works (as modified or amended prior to such change by Article 10 (Changes in Project Works or Service Period Works)); or

- (c) any modification, variation, addition, reduction, substitution, omission, deletion, removal or other change to the whole or any part of Project Building and Systems after the Completion Date (as modified or amended prior to such change by Article 10 (Change in Project Works or Service Period Works));

but for certainty, a Change does not include a Variation;

**“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 then 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 to direct or cause the direction of the management, actions or policies of such person;

**“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 Preferred Proponent Agreement;

**“Change in Ownership”** means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person;

**“Change Threshold Amount”** has the meaning ascribed to it in Section 10.9 (Change in Project Works or Service Period Works);

**“City”** means the Corporation of the City of Oshawa;

**“City Lease”** means the lease of the Site between the City, as lessor and HMQ, as tenant effective March 1, 2007, as such lease may be amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions of Section 3.5;

**“City Representative”** means the City Manager or such other person appointed from time to time by the City to act as the City’s representative through the remediation and inspection process of the Site as set forth herein and notified in writing as such to Project Co and through the testing, monitoring and review process, as set forth in the Undertakings;

**“Clearance Certificate”** means a clearance certificate issued by the Workplace Safety and Insurance Board;

**“Commercial Occupancy Agreement”** means all leases, agreements or licenses, offers to lease or licence, agreements to lease, renewals of agreements or subagreements or



sublicenses and any other rights or licenses granted by or on behalf of Project Co which entitle any Person to possess or occupy any portion of the Commercial Space.

“**Commercial Occupant**” means the Person proposed by Project Co to be the occupant (by way of lease, license or any other right of occupancy) of all or any portion of the Commercial Space.

“**Commercial Space**” means the portion of the Project Facilities having a rentable area of approximately 220 square metres in that portion of the Project Facilities which is contemplated by the parties at the date hereof to be that area identified on the food services facilities plan attached hereto as Schedule V or such other space as the parties may otherwise agree, acting reasonably and designated in the Final Schematic Design as the “**Commercial Space**” (and not licensed to HMQ under this Agreement) and which is intended to be subleased or sublicensed by Project Co to tenants or licensees for retail operations.

“**Commissioning**” has the meaning ascribed to it in **Schedule C (HMQ Outline Commissioning Plan)**;

“**Commissioning Commencement Date**” means the date specified by Project Co as the date in which Commissioning by Project Co will commence;

“**Compensation Date**” has the meaning given in **Schedule G (Calculation of Termination Payments)**;

“**Compensation Event**” has the meaning given in Section 26.1 of this Agreement;

“**Competitive Tender Quotes**” has the meaning set forth in Section 10.4(d) of this Agreement;

“**Completion**” shall have occurred when the requirements set out in Section 1 (Completion Criteria) of **Schedule D (Completion Certification)** have been met and the Independent Certifier has issued a Completion Certificate;

“**Completion Certificate**” means a certificate issued by the Independent Certifier pursuant to the provisions of Section 4.8 of this Agreement and **Schedule D (Completion Certification)**;

“**Completion Criteria**” means the completion criteria set out in Section 1 of **Schedule D (Completion Certification)**;

“**Completion Date**” means the date on which Completion is achieved as evidenced by the Completion Certificate, as such date shall be stated therein;

“**Completion Longstop Date**” means the date falling three hundred and sixty five (365) days after Planned Completion Date as such Planned Completion Date may be extended pursuant to Article 25 (Delay Events);

“**Completion Plan**” means a completion certification plan identifying the steps, processes, tests and outcomes required in order for the Independent Certifier to carry out its functions as provided in **Part V of Schedule B (Project Works)** and to determine whether the Project Facilities meet the Completion Criteria;

“**Confidant**” has the meaning ascribed to it in Section 48.11(a)(i);

“**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of Project Co or the Government of Ontario in respect of the Project, whether before or after the Date of Agreement;

“**Consents**” means all permissions, consents, approvals, certificates, permits, licenses, statutory agreements and other authorizations of a Governmental Authority required by Applicable Law and required for the performance of any of Project Co’s obligations under this Agreement and all necessary consents and agreements from any third parties (including any Development Approvals and Consents), needed by Project Co or any Project Co Party to perform the Project Works and the Service Period Works in accordance with this Agreement, and includes all conditions thereof but does not include any Consents (a) required in connection with HMQ entering into the Project Documents to which it is a party or performing any of its obligations thereunder; or (b) specifically related to the proposed operations of the Site by MAG Occupants and Non-MAG Occupants;

“**Construction Contractor’s Direct Agreement**” means the direct agreement between HMQ, Project Co, the Construction Subcontractor and the Construction Guarantor in the form set out in **Schedule Q (Construction Contractor’s Direct Agreement)**;

“**Construction Documents Stage**” has the meaning ascribed to it in the Design and Construction Procedure;

“**Construction Guarantor**” means PCL Construction Group Inc.;

“**Construction Subcontract**” means the construction contract dated on or about the date hereof between Project Co and the Construction Subcontractor in respect of the execution and completion of the Project Works;

“**Construction Subcontract Dispute**” has the meaning specified in the Dispute Resolution Procedure;

“**Construction Subcontractor**” means PCL Constructors Canada Inc. engaged by Project Co to perform the Project Works and any substitute construction subcontractor engaged by Project Co as permitted by this Agreement from time to time to perform the Project Works or (where applicable) any Service Period Works;

“**Construction Work**” has the meaning in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**;

“**Contamination**” means the presence of any Hazardous Substance, in, on, under or migrating from the Site, except Hazardous Substances present in concentrations below applicable generic standards as set by Environmental Laws;

“**Contract Month**” means a calendar month falling within the period following the Completion Date with the exception of the initial Contract Month, which shall commence on the Completion Date and end on the last day of the calendar month in which the Completion Date arises and the final Contract Month, which shall commence on the first day of the month in which the final day of the Agreement Term falls and end on the final day of the Agreement Term (the “**Last Contract Month**”);

“**Contract Year**” means a period of twelve (12) Contract Months starting on April 1, with the exception of the initial Contract Year, which shall commence on the Completion Date and end on the March 31, first occurring thereafter and the final Contract Year, which shall commence on April 1, 2039 and end on the final day of the Agreement Term (the “**Last Contract Year**”);

“**Co-ordination Agreement**” means that certain co-ordination agreement between the Construction Subcontractor, the Service Provider and Project Co, as such agreement may be amended, restated or otherwise modified from time to time;

“**Courthouse Activities**” includes the provision of courthouse activities normally provided in Ontario Courts, including the trying of criminal and civil court cases, hearings before statutory tribunals, mandatory mediations, the conduct of appeals, management and administration services and the provision of supporting services and including real property, title registry and search services, personal property security and registration services or other services of a similar nature to be provided to the public;

“**Courthouse Functionality**” means the ability of the Project Facilities to enable the MAG Staff, MAG Occupants and Non-MAG Occupants to carry out all Courthouse Activities in a secure, dignified and efficient manner and in particular achieving a balance between the circulation, proximity, appropriate room adjacencies and the security requirements of a courthouse in accordance with the requirements of **Schedule B (Project Works)** and shall be a salient evaluation factor of importance to HMQ and MAG at all stages of development of the Project Facilities;

“**Courthouse Service User**” means a person (other than a Province Person) present at the Project Facilities in order to make use of the Courthouse Activities (whether voluntarily or involuntarily) and/or Project Facilities or any other services and activities provided or performed at the Project Facilities by Province Persons, from time to time;

“**CPI**” means the Consumer Price Index Canada, as published by Statistics Canada from time to time;

“**Critical Items**” has the meaning given to it in Section 43.15 (Dispute Resolution);

“**Crown**” means Her Majesty the Queen in right of Ontario;

“**Date of Agreement**” means the date of this Agreement;

“**Date of Receipt**” has the meaning given in Section 17.5(b) (Price, Payment and Set-Off);

“**Debt Service Amount**” means, for any period, the principal and interest payable by Project Co to the Senior Lenders in the normal course under the Senior Financing Agreements;

“**Deduction**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Default Interest Rate**” means simple interest at an annual rate equal to 2% over the rate of interest quoted by Bank of Montreal from time to time as its reference rate for which Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed from time to time;

“**Delay Events**” has the meaning given in Section 25.1 (Delay Events);

“**Design Adjustment**” means any refinement of Project Co’s design, drawings and specifications in respect of the Project Facilities between the date of submission by Project Co of the Interim Schematic Design (in accordance with the requirements set forth in the Preferred Proponent Agreement) and the Schematic Design Acceptance Date and which refinements are required in order to achieve Schematic Design Acceptance, which is not a change to the HMQ Design Requirements, and shall not result in an adjustment to the Monthly Service Payments;

“**Design Development Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**;

“**Design and Construction Compliance Consultant**” means a consultant to HMQ to act as an advocate for HMQ and MAG throughout the design and construction stage of the Project;

“**Design and Construction Procedure**” means the programs for the carrying out of the Project Works described in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**;

“**Design and Construction Submissions**” has the meaning ascribed to it in **Schedule N (Review Procedure)**;

“**Designated Project Co Employee**” has the meaning ascribed to it in **Schedule H (Background Check Requirements)**;

“**Development Approvals and Consents**” means the applicable Consents required from time to time for construction of the Project Facilities;

“**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement;

“**Direct Costs**” means , subject to item (b) of this definition,

- (a) the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or its Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Change 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 its Subcontractors while performing that part of the Project Works or the Service Period Works on the Site; (ii) salaries, wages and benefits of Project Co’s or its Subcontractors’ personnel when stationed at the Site office 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 its Subcontractors’ office personnel engaged in a technical capacity; (iv) without limiting items (i), (ii) and (iii) of this definition of “Direct Costs”, 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 to Project Co for employees pursuant to items (i), (ii) and (iii) of this definition of “Direct Costs”, but excluding for certainty all income taxes on such wages, salaries and other remuneration; (v) travel and subsistence expenses of Project Co’s or its Subcontractors’ officers or employees referred to in items (i), (ii) and (iii) of this definition of “Direct Costs”; (vi) the cost of materials, products, supplies and equipment, including transportation thereof; (vii) the cost of materials, products, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the Change; (viii) rental costs of all tools, machinery, and equipment, exclusive of hand tools, used in the performance of the Change, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof; (ix) the cost of all equipment and services required for the Subcontractors’ field office; (x) deposits lost; (xi) the amount of all Subcontracts with Subcontractors; (xii) the amount paid for any design services; (xiii) the cost of third party quality assurance required by HMQ, such as independent inspection and testing services; (xiv) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Change; (xv) subject to item (iv) of this definition of “Direct Costs”, Taxes, but excluding (a) GST; (b) taxes imposed on Project Co or a Project Co Party based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario), *Corporations 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 Project Co Party; (d) taxes relating to withholdings on any payments by Project Co or a Project Co Party; 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 Works or the Service Period Works; (xvi) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris (the cost of which Project Co is not responsible for under this Agreement); (xvii) 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 Change reducing the scope of the Project Works or the Service Period Works, 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; (xviii) the cost of financing, including additional commercially reasonable financing costs related to any delay caused by the implementation of the Change; (xix) the cost of any additional bonds or insurance approved by HMQ; (xx) reasonable fees and disbursements of Project Co's legal advisors; (xxi) the cost of competitively tendering any contract in relation to the proposed Change which is required by Applicable Law; and (xxii) the cost of obtaining Consents;

- (b) 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;
  - (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Works or the Service Period Works as a result of the Change shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arms-length third party suppliers; and
  - (iii) 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 Oshawa, Ontario.
- (c) any cost incurred by any Province Person due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Change will be borne by Project Co.

**“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;

**“Discount Rate”** has the meaning ascribed to it in **Schedule G (Calculation of Termination Payments)**;

**“Discrete Courthouse Areas”** means the following areas located within the courthouse building at the Project Facilities: (i) judges private chambers; and (ii) office areas dedicated for the exclusive use of Province Persons (and which are not accessible to the public);

**“Discrete Energy Targets”** or **“DET”** has the meaning ascribed to it in **Schedule M (Energy Matters)**.

**“Discriminatory Change in Law”** means a Change in Law, the effect of which is to discriminate directly or impose additional Taxes which applies specifically to:

- (a) courthouses whose design, construction, financing and facilities management are procured by a contract similar to this Agreement in relation to other similar facilities;
- (b) the Project Facilities in relation to other facilities similar to a courthouse;
- (c) Project Co in relation to other persons; or
- (d) persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to this Agreement in relation 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:

- (i) 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);
- (ii) solely on the basis that its effect on Project Co is greater than its effect on other entities similar to Project Co; or
- (iii) where such Change in Law is a change in Taxes that affects companies generally and the circumstances described in paragraphs (a) to (d) above, inclusive, do not specifically apply;

“**Dispute**” means all disputes, controversies or claims arising out of or relating to any provision of this Agreement, or the alleged wrongful exercise or failure to exercise by a party of a direction or power given to that party under this Agreement, or the interpretation, enforceability, performance, breach, termination or validity of this Agreement;

“**Dispute Resolution Procedure**” means the procedure set out in Article 43 (Dispute Resolution);

“**Distribution**” means, (whether in Cash or in kind) any:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
- (c) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the Effective Date and which is either not in the ordinary course of business or not on reasonable commercial terms; or
- (d) the receipt of any other benefit which is not received in the ordinary course of business or on reasonable commercial terms,

and where any such Distribution is not in Cash, the equivalent cash value of such Distribution shall be calculated;

“**Draft Proposal**” means the proposal described in Section 50.3(a) (Market Testing);

“**Durham Police**” has the meaning given in Section 13.5;

“**e Room**” means a secured Internet-based project document management site wherein all documents (excluding proprietary information) produced by Project Co and its subconsultants, Subcontractors, testing and inspection firms, the Independent Certifier, and all other interested parties related to the design and construction of the Project, are posted for the purpose of providing information relevant to the development of the Project Facilities;

“**Effective Date**” means March 1, 2007;

“**Electronic Data Site**” means the electronic depository at website address <https://projectpoint.buzzsaw.com> established for Project Co and other proponents prior to the Date of Agreement, which electronic data room contains, among other things, drawings, reports, studies, data, documents and/or other information which were given or made available to Project Co by or through HMQ, any of its agents, or any related stakeholders;

“**Emergency Event**” means any situation, event, occurrence, multiple occurrences or circumstances:

- (a) which, in the opinion of HMQ or MAG, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) thereof that:
  - (i) constitutes a threat to health and safety of any user (including MAG Occupants, Non-MAG Occupants and Courthouse Service Users) of any part of or the whole of the Project Facilities;
  - (ii) constitutes a hostage situation or state of emergency declared as such by HMQ’s Representative or MAG (acting reasonably);
  - (iii) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Project Facilities, any part of the Site, the conduct of Project Operations and/or the conduct of Courthouse Activities; and/or
  - (iv) constitutes a period of transition to or from war, and/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;

“**Emergency Response Plan**” means an emergency response plan prepared by HMQ that describes actions to be taken in the event of an Emergency Event at the Project Facilities;

“**Encumbrances**” means any mortgage, lien, pledge, judgement, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever;



“**Energy and Utilities**” means energy/power supplies and waste recovery, including electricity, telephone, natural gas/fuel oil, water, sanitary waste and storm water, gas, electricity, water and drainage;

“**Energy Services**” has the meaning ascribed to it in **Schedule M (Energy Matters)**;

“**Energy Target Letter**” means has the meaning ascribed to it in **Schedule N (Review Procedure)**.

“**Energy Utilities**” has the meaning ascribed to it in **Schedule M (Energy Matters)**;

“**Environment**” means all or any media of air, water and land, the health of living organisms and ecological systems wherever occurring;

“**Environmental Barrier**” has the meaning set forth in Section 21.8(a);

“**Environmental Consultant**” means Golder Associates Ltd., acting as contractor to the City, or such other environmental consultant (acting as contractor to the City) as agreed to between Project Co and HMQ;

“**Environmental Law**” means any Applicable Law relating to pollution or protection of the Environment or the protection of occupational health and safety including the conditions of the work place or the generation, transportation, storage, treatment or disposal of Hazardous Substances, contaminants or the clean-up or remediation of any of the same;

“**Equity IRR**” means the projected internal rate of return to all Relevant Persons over the full term of the Agreement, taking into account the aggregate of all of their investments and of all Distributions made and projected to be made;

“**Equity Sale IRR**” means the internal rate of return to the date of the equity sale calculated by taking into account the full Implied Equity Value, together with all Distributions paid by Project Co in respect of its share capital, and the actual timing of payment of all such amounts;

“**Estimate**” means Project Co’s estimate of the particular matters required to implement an HMQ Notice of Change;

“**Estimated Change in Project Costs**” means in relation to Article 10 (Change in Project Works or Service Period Works) or Article 22 (Change in Law), the aggregate of any estimated increased construction costs, operating costs and financing costs less the aggregate of any reduced construction costs, operating costs and financing costs;

“**Estimated Fair Value of the Agreement**” has the meaning given in **Schedule G (Calculation of Termination Payments)**;

“**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:

- (a) the amount paid to Project Co's equity holders in consideration of a percentage of Project Co's subscribed share capital; and
- (b) the Threshold Equity Sale Amount;

“**Excusing Cause**” has the meaning given in Section 27.1 (Excusing Causes);

“**Exempt Refinancing**” means:

- (a) any Refinancing that was fully taken into account in the calculation of the Monthly Service Payments and included in the output from the Financial Model as of the Date of Agreement;
- (b) a change in taxation or change in accounting treatment pursuant to a Change in Law or a change in GAAP;
- (c) the exercise of any right, the grant of any amendment, waiver or consent or any similar actions under the Senior Financing Agreements that does not provide for a financial benefit to Project Co under those agreements;
- (d) any sale of shares in Project Co by the shareholders or securitization of the existing rights or interests attaching to shares in Project Co, unless such sale or securitization involves increasing the Senior Debt on terms more favourable to Project Co than contained in the Senior Financing Agreements;
- (e) any Qualifying Bank Transaction;
- (f) any Rescue Refinancing;
- (g) any Refinancing that was approved by HMQ prior to the execution of this Agreement and occurs during the first six months following the Date of Agreement;
- (h) any amendment, variation or supplement of any agreement approved by HMQ as part of any Change under this Agreement;
- (i) any Permitted Borrowing; or
- (j) the refinancing contemplated in Section 30.10;

“**Existing FF&E**” means any item of fixtures, fittings, furnishings, chattels and equipment relocated to the Project Facilities from the Old Facilities or elsewhere for and/or on behalf of MAG Occupants and Non-MAG Occupants, but does not include New MAG FF&E;

“**Expert**” means a suitably qualified and experienced individual or organization of good repute with no direct or indirect commercial interest in this Agreement;

“**Expiry Date**” means the date which is thirty (30) years after the original Planned Completion Date;

“**Facilities Management**” has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Failure Event**” has the meaning given in **Schedule F (Payment Mechanism)**;

“**Failure Event Deduction**” has the meaning given in **Schedule F (Payment Mechanism)**;

“**Fair Value**” has the meaning given in **Schedule G (Calculation of Termination Payments)**;

“**FF&E**” means Existing FF&E, Non-MAG Occupant FF&E and New MAG FF&E, but does not include the Project Assets;

“**Final Schematic Design Submission**” has the meaning ascribed to it in Section 4.2(a) (Design Development and Construction).

“**Financial Close**” means the date that funds are available to Project Co in accordance with the terms of the Initial Financing Agreements;

“**Financial Model**” means the financial model agreed between the parties prior to the Date of Agreement (as updated from time to time);

“**Financial Model Equity IRR**” has the meaning ascribed to it on **Schedule G (Calculation of Termination Payments)**;

“**Financing Agreements**” means all or any of the agreements or instruments entered into or to be entered into by Project Co or any of its Affiliates relating to the financing of the Project (including the Initial Financing Agreements) and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness or any Refinancing;

“**FIPPA**” has the meaning ascribed to it in Section 48.1;

“**FM Component**” has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Force Majeure Event**” means the occurrence after the Date of Agreement of:

- (a) war, civil war, armed conflict or terrorism, acts of foreign enemies or hostilities;
- (b) nuclear or radioactive contamination of the Project Works, the Project Facilities and/or the Site unless the source or cause of the contamination is the result of actions of Project Co or any Project Co Party,
- (c) chemical or biological contamination of the Project Works, the Project Facilities and/or the Site from any event referred to in item (a) of this definition of Force Majeure;
- (d) pressure waves caused by devices traveling at supersonic speeds;

- (e) the discovery of fossils, remains, articles of value or antiquities and other items referred to in Section 4.11(d) prior to Completion, which, as a result of Applicable Law, require the Project Works to be abandoned; or
- (f) epidemics or pandemics in the Durham Region, Ontario, if such epidemics or pandemics have formally been declared to exist by the World Health Organization or the Chief Medical Officer of Health of the Province of Ontario; or

which directly causes either party to be unable to comply with or perform all or a material part of its obligations under this Agreement; or

- (g) any Change in Law which renders Project Co incapable of performing the whole of its obligations under this Agreement; or
- (h) a Relief Event that continues for 90 days, except where such Relief Event is or results from damage or destruction of a material part of the Project Facilities that is the subject of a claim under an insurance policy and the Project Facilities are being repaired;

**“Force Majeure Termination Sum”** has the meaning ascribed to it in **Schedule G (Calculation of Termination Payments)**;

**“Full Records”** means all records relating to the Project Facilities and the Project Operations which are necessary in order to enable Project Co, any Successor Project Co and HMQ (as appropriate) to:

- (a) satisfy all obligations of Project Co and HMQ (as appropriate) under this Agreement; and
- (b) comply with all statutory obligations; and
- (c) comply with all reasonable requirements of HMQ; and
- (d) provide any Successor Service;

and all records which should be retained in accordance with the principles of Good Industry Practice and the HMQ Facilities Management Requirements relating to the performance of the Project Operations under this Agreement;

**“GAAP”** means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

**“Gainshare Adjustment”** has the meaning specified in **Schedule M (Energy Matters)**;

**“Golder Reports”** means the following reports of Golder Associates Ltd. in respect of the Site (i) remedial action plan – Durham Regional Courthouse Oshawa Candidate Site, Oshawa, Ontario, dated August 9, 2005; (ii) remedial action plan and remediation schedule – Durham Consolidated Courthouse Site, Oshawa, Ontario, dated January 31, 2006; (iii) supplementary sub-surface investigation, Durham Consolidated Courthouse

Site, Northwest Corner of Bond and Division Streets, Oshawa, Ontario, dated January 31, 2006; (iv) report on phase I environmental site assessment – proposed provincial courthouse site, northwest corner of Bond and Mary Streets, Oshawa, Ontario, dated November, 2002; (v) report on phase II environmental site assessment, proposed provincial courthouse site, northeast corner of Bond and Mary Streets, Oshawa, Ontario, dated November, 2002; (vi) geotechnical investigation report – proposed Durham Regional Courthouse Site, Northwest corner of Bond and Division Streets, Oshawa, Ontario, dated August 9, 2005; (vii) report on supplementary geotechnical investigation – Durham Consolidated Courthouse Site, Northwest corner on Bond Street and Division Street, City of Oshawa, February, 2006; (viii) remediation report – Durham Consolidated Courthouse Site, 150 Bond Street East, Oshawa, Ontario dated February 5, 2007; (ix) amended remedial action plan and remediation schedule, Durham Consolidated Courthouse Site, Oshawa, Ontario dated February 22, 2007; (x) Phase I Environmental Site Assessment, Part of 150 Bond Street East (former residential lots referred to as 52, 56 and 62 Division Street), City of Oshawa, Ontario, December 2006; (xi) Phase II Environmental Site Assessment, Part of 150 Bond Street East (former residential lots referred to as 52, 56 and 62 Division Street), Oshawa, Ontario, December 2006; and (xii) any other report of Golder Associates Ltd. dated on or prior to the Date of Agreement that Golder Associates Ltd. agrees in writing to deliver, address and allow HMQ, Project Co and the Senior Lenders to rely upon;

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence, operating practice and foresight which would reasonably and ordinarily be expected from a skilled and experienced person seeking in good faith to comply with his contractual obligations including all Applicable Law and who is experienced in carrying out services and works comparable in size, scope and complexity to the Project Works or the Service Period Works;

“**Governmental Authority**” means:

- (a) any federal, provincial, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, board, official, minister, bureau or agency or any official or public statutory person;
- (b) any agent, commission, board or authority of any of the foregoing;
- (c) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing; or
- (d) the Parliament of Canada or the Legislative Assembly of Ontario;

having legal jurisdiction in any way over any aspects of the performance of this Agreement or the operation of the Project Facilities, in each case, to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction;

“**Government of Ontario**” means Her Majesty the Queen in Right of Ontario;

“**GST**” means goods and services taxes payable in accordance with the *Excise Tax Act* (Canada);

“**Handback**” means the return of the Project Assets, the FM Components and the Replacement FM Components by Project Co to HMQ on the Expiry Date in accordance with this Agreement;

“**Handback Amount**” has the meaning ascribed to it in Part II: Handback Requirements of **Schedule E (Service Period Works)**;

“**Handback Certificate**” means the certificate of confirmation provided by the Independent Inspector that the Project Assets, the FM Components and the Replacement FM Components comply with the Handback Requirements on the Expiry Date, which certificate is issued in accordance with Part II: Handback Requirements of **Schedule E (Service Period Works)**;

“**Handback Program**” has the meaning ascribed to it in Part II: Handback Requirements of **Schedule E (Service Period Works)**;

“**Handback Requirements**” has the meaning ascribed to it in Part II: Handback Requirements of **Schedule E (Service Period Works)**;

“**Handback Works**” has the meaning ascribed to it in Part II: Handback Requirements of **Schedule E (Service Period Works)**;

“**Hazardous Substances**” means any subsurface toxic, caustic or otherwise hazardous substance, pollutant or contaminant, including, without limitation, (i) any petroleum or other hydrocarbon products, by products and derivatives, radon gas, or radioactive materials, or (ii) any chemicals, materials or substances, or by products or breakdown products related thereto, defined as or included in the definition of “hazardous substances”, “waste”, “dangerous goods”, “deleterious substance”, “hazardous wastes”, “subject wastes”, “hazardous recyclables”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants” or words of similar import, under any applicable federal, provincial, regional, municipal or local laws with respect to environmental or occupational health and safety matters contained in statutes, regulations, rules, policies, guidelines and other materials imposing binding requirements and orders, and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Authority or under federal, provincial, regional, municipal or local laws with respect to environmental or occupational health and safety matters contained in statutes, regulations, rules, policies, guidelines and other materials imposing binding requirements and orders;

“**HMQ Change**” means a Change in the Project Works, the Service Period Works and/or the Project Building and Systems once accepted by HMQ which, in each case, Project Co is obliged to implement under Article 10 (Change in Project Works or Service Period Works);

“**HMQ Change Order**” means a written instruction by HMQ directing Project Co to implement a Change in accordance with Article 10 (Change in Project Works or Service Period Works);

“**HMQ Default**” means any one or more of the following events or circumstances:

- (a) an expropriation, sequestration or requisition by HMQ or other Relevant Authority of:
  - (i) a material part of the Project Facilities and/or the Site; and/or
  - (ii) a material part of the shares of Project Co;
- (b) a failure by HMQ to make payment of any Monthly Service Payment exceeding, singularly or in the aggregate, Cdn. \$250,000 (indexed) that is due and payable by HMQ to Project Co under this Agreement (which sum or sums are not being disputed by HMQ in accordance with the Dispute Resolution Procedure, in accordance with Article 17 (Price, Payment and Set-Off) or otherwise) and:
  - (i) subject to item (b)(ii) of this definition of HMQ Default, in the case of a failure to make any individual Monthly Service Payment, such failure continues for a period of thirty (30) days; or
  - (ii) in respect of three (3) Monthly Service Payments in any rolling nine (9) month period, there have been failures to make payment for periods of fifteen (15) Business Days in respect of each such Monthly Service Payment,  
  
in any such case, from receipt by HMQ of a notice of non-payment from or on behalf of Project Co;
- (c) a failure by HMQ to make payment of any amount of money (other than Monthly Service Payments) exceeding, singularly or in the aggregate, Cdn \$250,000 (indexed) that is due and payable by HMQ under this Agreement (which sum or sums are not being disputed by HMQ in accordance with the Dispute Resolution Procedure or otherwise), where such failure continues for a period of forty-five (45) days from receipt by HMQ of a notice of non-payment from or on behalf of Project Co unless the payment by HMQ of the relevant amount of money (other than the Monthly Service Payment) requires the specific approval of a Governmental Authority pursuant to Applicable Law, in which case the failure by HMQ to make such payment shall only constitute an “HMQ Default” hereunder if it continues for a period of one hundred and twenty (120) days from the date of receipt by HMQ of a notice of non-payment from or on behalf of Project Co and provided further that HMQ is using its best efforts to obtain the specific approvals for such payment within the one hundred and twenty (120) day period;
- (d) termination, surrender, expiry or other discontinuance of the City Lease if the effect is to terminate the Sub Lease or otherwise make Project Co incapable of

occupying the Project Facilities and carrying out its obligations under this Agreement;

- (e) an act or omission of HMQ which substantially frustrates Project Co's ability to perform under this Agreement for a continuous period of not less than sixty (60) days; or
- (f) a Change in Law which renders HMQ incapable of performing all or substantially all of its obligations under this Agreement (for certainty, any Change in Law which results in an assignment or delegation of the obligations of HMQ under this Agreement to an agent of HMQ having the legal capacity, power, authority and ability to become a party to and perform all of HMQ's obligations hereunder shall not be considered an HMQ Default);

**"HMQ Default Termination Sum"** has the meaning given in **Schedule G (Calculation of Termination Payments)**;

**"HMQ Design Requirements"** means the terms and requirements described in and required by Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement, as amended by various addenda attached to Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement and as such HMQ Design Requirements are enhanced by the value add submission requirements described in **Part VIII: Value Add Submission Requirements of Schedule B (Project Works)**;

**"HMQ Facilities Management Requirements"** means the requirements for the scope and standard of the Service Period Works to be provided in accordance with the terms set forth in this Agreement as more particularly described in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

**"HMQ Materials"** means any data, reports, drawings, specifications, software, designs and/or other material or documents produced by or on behalf of HMQ and used pursuant to or in relation to the Project Facilities, but excluding the Jointly Developed Materials;

**"HMQ Notice of Change"** means a notice served by HMQ proposing a Change in accordance with Article 10 (Change in Project Works or Service Period Works);

**"HMQ Outline Commissioning Plan"** means the schedule setting out HMQ's minimum standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities (to be detailed in the Project Co Commissioning Program) as outlined in **Schedule C (HMQ Outline Commissioning Plan)**;

**"HMQ's Representative"** means, during the period between the Date of Agreement until the end of the Occupancy Stage, the Design and Construction Compliance Consultant and during the period after the Completion Date until the earlier of the Expiry Date and the Termination Date the person appointed from time to time by HMQ to act as its representative through the design, construction and operational phases of the Project for the purposes of this Agreement and notified in writing as such to Project Co. For



certainty, there shall be two HMQ Representatives during the period between Completion and the end of the Occupancy Stage;

“**HMQ’s Requirements**” means collectively the HMQ Design Requirements and the HMQ Facilities Management Requirements;

“**IC’s Representatives**” has the meaning given in Section 3.4(c) (Formation and Duration of the Agreement);

“**Implied Equity Value**” means the amount paid to Project Co’s equity holders in consideration of a percentage of Project Co’s subscribed share capital divided by the percentage of Project Co’s subscribed share capital sold by Project Co’s equity holders in a particular equity sale transaction;

“**Indemnifier**” has the meaning given in Section 19.8(a) (Representations, Warranties and Indemnity);

“**Independent Certifier**” means the suitably qualified and experienced person appointed by HMQ and Project Co in accordance with Section 3.4 to act as Independent Certifier for and on behalf of Project Co and HMQ until completion of the Project Works, as such person may be replaced from time to time in accordance with the terms of the Independent Certifier’s Contract;

“**Independent Certifier’s Contract**” means the contract to be entered into on or after the date hereof between HMQ, Project Co and the Independent Certifier substantially on the terms and conditions set forth in the proposed contract terms set forth in Part V: Independent Certifier of **Schedule B (Project Works)**;

“**Independent Inspector**” means the independent inspector jointly appointed by Project Co and HMQ in relation to Handback, to certify, among other things, that the Handback Requirements have been met;

“**Indirect Losses**” has the meaning given in Section 19.7 (Representations, Warranties and Indemnities);

“**Initial Financing Agreements**” means the Financing Agreements put in place on the Date of Agreement and dated as of the Date of Agreement, a list of which is set out in **Schedule K (Initial Financing Agreements)**;

“**Insurance**” means the insurance Project Co is required to procure in accordance with Article 20;

“**Insurance Contingency Amount**” has the meaning given in Section 2.19(a) (Performance Generally);

“**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, know-how, rights of publicity, mask work rights, moral rights, goodwill, 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;

“**Intellectual Property Rights**” include any current or future, legal and/or equitable interests in Intellectual Property;

“**Interest Rate**” means a rate of interest per annum announced by Bank of Montreal (or its successor) from time to time as being its “prime rate” for Canadian Dollar demand loans made to its commercial customers in Canada, as such rate may be changed from time to time;

“**Interim Schematic Design**” means the interim schematic design of the Project Facilities which revises the design of the Project Facilities submitted by Project Co with its RFP-2 Proposal and incorporates the design modifications agreed to by OIPC, MAG and Project Co in accordance with the Preferred Proponent Agreement.

“**IPFP Framework**” means the principles set out PIR’s *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector*;

“**Irrecoverable Tax**” has the meaning given in Section 36.5(b);

“**Jointly Developed Materials**” means data, drawings, reports, plans, software, formulae, calculations, designs (including, for certainty, the Interim Schematic Design, the Schematic Design, any plans or programs developed and approved by HMQ hereunder, all drawings and specifications as prepared and produced by Project Co or the Project Co Architect and the Record Drawings), any other materials developed jointly by Project Co and HMQ pursuant to this Agreement or in relation to the Project Facilities, the Site, the Project Works or the Service Period Works and any other materials developed by either HMQ, Project Co or any Project Co Party pursuant to this Agreement or in relation to the Project Facilities, the Site or the Project Operations and excludes, for certainty, the Project Co Materials and the HMQ Materials;

“**Last Contract Month**” has the meaning given to that expression in the definition of “Contract Month” above;

“**Last Contract Year**” has the meaning given to that expression in the definition of “Contract Year” above;

“**LEED EB Certification**” means the award of LEED for Existing Building Upgrades, Operations and Maintenance Certification from the United States Green Building Council or, if such program exists at the relevant time and the program does not contain any requirements more stringent or costly than the certification requirements of the United States Green Building Council, “**LEED EB Certification**” shall mean the award of

LEED for Existing Building Upgrades and Maintenance Certification from the Canada Green Building Council;

"**LEED EB Certification Date**" has the meaning specified in Section 4.14(i);

"**LEED EB Rating System**" means the United States Green Building Council's Leadership in Energy & Environmental Design (LEED) Green Building Rating System for Existing Buildings Upgrades, Operations and Maintenance, Version 2, or if such program exists during the Service Period and the program does not contain any requirements more stringent or costly than the certification requirements of the United States Green Building Council, "**LEED EB Rating System**" shall mean the Canada Green Building Council's Leadership in Energy & Environmental Design (LEED) Green Building Rating System for Existing Building Upgrades, Operations and Maintenance;

"**LEED Rating System**" means CaGBC's Leadership in Energy & Environmental Design (LEED) Green Building Rating System For New Construction & Major Renovations LEED Canada – NC Version 1.0;

"**LEED Silver Certification**" means the award of a LEED Silver certification from the CaGBC;

"**Lenders' Direct Agreement**" means the agreement to be entered into between HMQ, the Senior Lenders and Project Co, in the form attached as **Schedule J (Lenders' Direct Agreement)**;

"**Liquid Market**" has the meaning ascribed to it in **Schedule G (Calculation of Termination Payments)**;

"**MAG**" means the Ministry of the Attorney General of Ontario;

"**MAG Design Revisions**" means the design revisions described in Section 2 of Appendix "A" of Schedule "E" of the Preferred Proponent Agreement.

"**MAG Occupants**" means any of the following persons:

- (a) the judiciary including all justices of the Superior Court of Ontario or Court of Appeal of Ontario and all judges of the Ontario Court of Justice, deputy judges, masters and case management masters and justices of the peace;
- (b) all MAG Staff and any translators and court reporters working under contract to MAG; and
- (c) contractors to MAG including any person providing services for a service provider under a Mental Health Fitness Assessment program under the *Criminal Code* (Canada),

while attending at the Project Facilities or the Site in their official capacity;

"**MAG Staff**" means all persons who are employed or engaged by the Crown in connection with the conduct of Courthouse Activities by MAG at or in connection with

the Old Facilities prior to the Completion Date and at or in connection with the Project Facilities during the Agreement Term and for greater certainty includes:

- (a) all Court services staff (office and in-court);
- (b) Crown attorneys and assistant Crown attorneys; and
- (c) victims/witness assistance program staff,

while attending at the Project Facilities or the Site in their official capacity;

“**Maintenance Work**” means any work after Completion for maintenance or repair of the Project Facilities in accordance with the requirements of this Agreement.

“**Market Tested Services**” means the following services as described in the HMQ Facilities Management Requirements:

- (a) Cleaning Services (including for both building exterior and building interior);
- (b) Grounds Maintenance and Landscaping Services;
- (c) Security Services;
- (d) Furniture and Office Equipment Services;
- (e) Food Services;
- (f) Parking Services; and
- (g) Material Services.

“**Market Testing**” means the process described in Article 50 (Market Testing), including the Benchmarking Exercise, if applicable;

“**Market Testing Meeting**” means a meeting convened in accordance with Section 50.1 (Market Testing);

“**Market Testing Proposal**” means the final version of the Draft Proposal, as agreed by HMQ and Project Co or as determined, in either case, in accordance with Article 50 (Market Testing);

“**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 Agreement cannot substantially prevent or cannot substantially remove with the result that:

- (a) it is unsafe to admit Courthouse Service Users, MAG Occupants and Non-MAG Occupants to the relevant area or to use the area for the purpose for which it is intended; and

(b) the area cannot be made safe for the admission of Courthouse Service Users, MAG Occupants or Non-MAG Occupants;

“**Minor Matters**” has the meaning ascribed to it in **Schedule D (Completion Certification)**;

“**Minor Matters List**” has the meaning ascribed to it in **Schedule D (Completion Certification)**;

“**Monitoring and Rectification Notice**” has the meaning ascribed to it in Section 31.2(b);

“**Monthly Monitoring Report**” means the report specified in Section 4.3 of Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** in respect of Service Period Works or a part of the Service Period Works which Project Co has an obligation to prepare for MAG and HMQ in respect of its performance of the Service Period Works or the relevant part of it during a specified period;

“**Monthly Service Payment**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Monthly Service Payment Invoice**” has the meaning ascribed to it in Section 17.3;

“**Net Change Costs**” has the meaning given to it in Section 10.9 (Change in Project Works or Service Period Works);

“**New MAG FF&E**” means any item of fixtures, fittings, furnishings, chattels and equipment (including, for certainty, A/V Equipment) located from time to time at or on the Project Facilities or the Site which (i) Project Co arranges for purchase and is installed in the Project Facilities by Project Co on or before Completion in order to meet courthouse functionality as laid out in the HMQ Design Requirements; or (ii) Project Co arranges for purchase and is installed into the Project Facilities by Project Co during the Service Period in accordance with the terms of the Agreement;

“**New Project Co**” has the meaning given in **Schedule G (Calculation of Termination Payments)**;

“**New Site Contamination**” means the presence on or under the Site of any Hazardous Substances, including Hazardous Substances that may migrate to, under or from the Site, during or after the Agreement Term but excludes the Project Co Caused Contamination;

“**Non-MAG Occupants**” means an occupant of the Project Facilities other than MAG Occupants and Project Co Parties, including, without limitation:

- (a) a member of Durham Regional Police Services;
- (b) an officer or employee of the Durham Region Law Association;
- (c) a Crown employee or contractor of the Crown, or person employed by such contractors who is engaged in work for Ministry of Community Safety and

Correctional Services or the Ministry of Children and Youth Services, and all other agencies with temporary or permanent offices in the Project Facilities, which include, without limitation, a Mental Health Program and Bail Program;

- (d) a Crown employee or person performing services under any contract with the Crown for or on behalf of any Ministry of the Province of Ontario other than the Ministry of the Attorney General;
- (e) an officer or employee of Legal Aid or in connection with a bail program;
- (f) an officer, employee or volunteer of a private sector social welfare agency providing service at the Project Facilities or the Site, including any children's aid organization; and
- (g) a federal prosecutor or a contractor to or any employee or office holder of Her Majesty in right of Canada, other than a member of the judiciary;

**“Non-MAG Occupant FF&E”** means any item including fixtures, fittings, furnishings, chattels and equipment located from time to time at or on the Project Facilities or the Site and of which Non-MAG Occupants are the owner or lessee, and includes, for certainty, any and all replacements for or additions to such items;

**“Non-Project Specific Plant and Equipment”** means the plant, machinery, fixtures, equipment, vehicles, stock and materials owned by Project Co or any Project Co Party which are not specifically dedicated to or predominantly used by Project Co or the Project Co Party in respect of the Project Facilities;

**“Normal Wear and Tear”** means wear and tear of the Project Assets that is reasonable given the intended use and the age of the Project Assets provided that Project Co has complied with its obligations under this Agreement, including the HMQ Design Requirements and the HMQ Facilities Management Requirements in order to design, build, and maintain the Project Facilities to withstand their intended use and to ensure the functionality and operability of the Project Facilities. Furniture, decorative fittings and finishes, floor coverings and soft furnishings that are still functional and operable but may be obsolete need not be replaced in order to satisfy the HMQ Facilities Management Requirements;

**“Notice of Dispute”** has the meaning specified in Section 43.1(a) (Dispute Resolution);

**“Occupancy Stage”** has the meaning ascribed to it in the Design and Construction Procedure;

**“OIPC”** means the Ontario Infrastructure Projects Corporation;

**“Old Facilities”** means those court facilities which are to be replaced by the Project Facilities and any other facility which MAG Occupants and Non-MAG Occupants were located immediately prior to their occupation of the Project Facilities;

“**Operating Subcontract**” means the service contract dated on or about the date hereof between Project Co and the Service Provider by which Project Co shall cause the performance of the Service Period Works;

“**Operational Protocol**” has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Original Certification**” has the meaning specified in Section 4.14(b);

“**Painshare Adjustment**” has the meaning specified in **Schedule M (Energy Matters)**;

“**Payment Commencement Date**” means the day on which the Completion Certificate is issued by the Independent Certifier;

“**Payment Date**” means the date determined in accordance with Section 17.6 (Price, Payment and Set-Off);

“**Payment Mechanism**” means the payment mechanism attached as Schedule F to this Agreement;

“**Performance Monitoring Program**” has the meaning ascribed to it in the HMQ Facilities Management Requirements;

“**Permitted Borrowing**” means any (i) advance to Project Co under the Senior Financing Agreements; (ii) amendment, waiver or exercise of a right under the Senior Financing Agreements made during the Step-In Period that does not increase HMQ’s liabilities under the Agreement whether actual or contingent, present or future, known or unknown; and (iii) any additional financing approved by HMQ in accordance with Section 10.7(c) of the Agreement.

“**Permitted Encumbrances**” means the following:

- (a) Encumbrances for taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessment or, if due, the validity of which is being contested diligently and in good faith and for which adequate provision has been made for the payment of same;
- (b) undetermined or inchoate liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised, or which relate to obligations not yet due and payable;
- (c) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of Project Co in respect of the Site in the ordinary course of business;
- (d) any security in respect of the Senior Financing Agreements permitted in accordance with the Lenders’ Direct Agreement;
- (e) any Development Approvals and Consents;

- (f) the City Lease and any notice in respect thereof;
- (g) the Sub Lease and any notice in respect thereof;
- (h) any Encumbrance created by or through HMQ, MAG or any other Province Person not acting on the direction of Project Co or any Project Co Party;
- (i) any Encumbrance registered on title to the Site as at the Date of Agreement; and
- (j) such other Encumbrance as may be approved by HMQ in writing.

“**person**” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof;

“**Personal Data**” means personal data which is supplied to Project Co by or on behalf of HMQ or obtained by Project Co in the course of performing the Service Period Works;

“**Personal Information**” means all personal information (as the term “personal information” is defined in the FIPPA) in the custody or control of Project Co or its Subcontractors other than personal information of the employees of Project Co or its Subcontractors and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from HMQ in respect of this Project;

“**PIR**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal, and includes any successors thereto or persons exercising delegated power under the Minister’s authority;

“**Planned Completion Date**” means November 24, 2009, as the same may be extended in accordance with the provisions of Article 25 (Delay Events);

“**Plant Services Information Management System**” has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**PMOC**” means the Project Management Oversight Committee as further described in Section 29.1(a) (Oversight Committee);

“**Pre-Completion Communications Plan**” means the communications plan more particularly described in **Schedule P (Pre-Completion Communications Plan)**;

“**Pre-Existing Site Contamination**” means the presence in, on or under the Site of any Hazardous Substances prior to the Date of Agreement, including Hazardous Substances that migrated to, under or from the Site prior to the Date of Agreement, and including Hazardous Substances identified in the Golder Reports;

“**Pre-Refinancing Equity IRR**” means the Equity IRR calculated immediately prior to the Refinancing, but without taking into effect the Refinancing;

“**Preferred Proponent Agreement**” has the meaning specified in Section 4.3(d);



**“Preferred Service Tenderer”** means, following the Market Testing of any Market Tested Service, any group of Market Tested Services or any part of any Market Tested Service (as the case may be), the Service Tenderer selected to provide such services in accordance with the provisions of Section 50.6 (Market Testing);

**“Preliminary Benchmarking Proposal”** has the meaning specified in Section 49.2 (Benchmarking);

**“Prohibited Act”** means:

- (a) offering, giving or agreeing to give to any elected official, Crown officer, employee, agent, or to any family member of such person or any public body, any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Agreement or any other agreement with HMQ or any public body in relation to the Project; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with HMQ or any public body in relation to the Project;

provided that it shall not be a Prohibited Act for Project Co or any Project Co Party to provide consideration to any person or any public body in the ordinary course of business, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Agreement or any other agreement with HMQ or any public body in connection with the Project.

- (b) entering into this Agreement or any other agreement with HMQ or any public body in connection with the Project for which 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 to HMQ or any public body or to any person employed by or on behalf of HMQ or any public body, 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 HMQ provided that this item (b) 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 HMQ 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 Agreement or any other agreement with HMQ or any public body in connection with the Project without contravening the intent of this definition of Prohibited Act and Article 34 (Prohibited Acts);
- (c) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any public body in connection with the Project or any other agreement with HMQ or any public body in connection with the Project; or

- (d) defrauding or attempting to defraud or conspiring to defraud HMQ or any other public body;

**“Prohibited Acts Termination Sum”** has the meaning ascribed to it in **Schedule G (Calculation of Termination Payments)**;

**“Project”** means the design, construction, operation and maintenance of the Project Facilities and the provision of the Service Period Works and the financing of any such activities and all matters ancillary thereto;

**“Project Accounts”** means accounts referred to in and required to be established under the Senior Financing Agreements;

**“Project Assets”** means the buildings, plant, machinery, fixtures, fittings, furnishings, chattels and other equipment installed and to be installed in the Project Facilities or otherwise located at the Site or required to facilitate compliance by Project Co to carry out the Project Works and the Service Period Works and to maintain the Project in accordance with this Agreement, and includes, without limitation, books and records (including operating and maintenance manuals, health and safety manuals and other know how), any spare parts, tools and other assets, any revenues and any other contractual rights and Intellectual Property Rights and any replacements for or additions to such plant, machinery, fixtures, fittings, furnishings, chattels and other equipment as required pursuant to this Agreement, which assets shall not include (i) FF&E; or (ii) Non-Project Specific Plant and Equipment;

**“Project Building and Systems”** means, after the Completion Date, the Project Facilities, but excludes the Project Works and Service Period Works;

**“Project Co Architect”** means the person designated by Project Co as its architect of record on or prior to the Date of Agreement for purposes of construction of the Project Facilities, or such other person appointed from time to time by Project Co to act as its architect of record for purposes of this Agreement;

**“Project Co Caused Contamination”** means the presence in, on or under the Site of any Hazardous Substances during the Agreement Term and which is caused by or is attributable to any acts or omissions of Project Co or any Project Co Party including the placement in, on or under the Site by Project Co or any Project Co Party of any Hazardous Substances and, for greater certainty, does not include Pre-Existing Site Contamination;

**“Project Co Commissioning Program”** means the schedule of final commissioning program to be jointly developed and agreed to by HMQ and Project Co in accordance with Section 4.5 (Commissioning);

**“Project Co Default”** means one of the following events:

- (a) the occurrence of any one or more of the following:
  - (i) any of the events described in Section 31.2(d);

- (ii) failure to replace a Subcontractor in accordance with Section 31.7;
  - (iii) an accumulation of 75,000 Service Failure Points with respect to all Service Categories under the HMQ Facilities Management Requirements in any rolling twelve (12) month period; or
  - (iv) an accumulation of 150,000 Service Failure Points in total in respect of all Service Categories and Unavailability Events in any rolling twelve (12) month period;
- (b) Project Co failing to achieve Completion by the Completion Longstop Date;
- (c) 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 Courthouse Activities, or that may compromise the reputation of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province or the integrity of either Durham Consolidated Courthouse or the nature of the Province of Ontario's justice system, so as to affect public confidence in that system and, in the case of a false or misleading representation or warranty made pursuant to this Agreement that is capable of being remedied, such breach is not remedied within ten (10) Business Days of receipt of notice of the same from HMQ;
- (d) Project Co committing a breach of (i) Article 45 (Personal Data) or Article 48 (Confidentiality and Freedom of Information and Protection of Privacy) or (ii) a breach of its obligations under this Agreement (other than a breach that is not otherwise referred to in items (a) to (c) inclusive or (e) to (s) inclusive of this definition of Project Co Default) which has or will have a material adverse effect on the performance of Courthouse Activities, other than where such breach is a consequence of a breach by HMQ of its obligations under the Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with the following:
- (i) Project Co shall:
    - (A) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on HMQ, MAG and the performance of Courthouse Activities;
    - (B) put forward, within five (5) Business Days of receipt of notice of such breach from HMQ, 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 sixty (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

- (C) 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
- (ii) upon Project Co failing to comply with any of the provisions of item (d)(i) of this definition of Project Co Default:
  - (A) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ, MAG and the performance of the Courthouse Activities; and
  - (B) Project Co shall, within three (3) Business Days after notice from HMQ, submit a plan and schedule, which HMQ shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ, 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

for greater certainty, Project Co failing to comply with any of the provisions of item (d)(ii) of this definition of Project Co Default, or HMQ, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Default;

- (e) Project Co wholly or substantially abandoning the Project Works or ceasing to perform all or a substantial part of its activities related to the Project Works for a period of three (3) consecutive Business Days per event or five (5) Business Days in the aggregate, in each case, following notice from HMQ to Project Co of such abandonment, other than (i) as a consequence of a breach by HMQ of its obligations under this Agreement; (ii) as a result of a scheduled work stoppage for seasonal holiday periods in the construction industry or statutory holidays recognized in the Province of Ontario; or (iii) scheduled work stoppage in the schedule for completion of Project Works;
- (f) the total or substantial abandonment of the Service Period Works by Project Co for a period of three (3) consecutive Business Days, except for an abandonment which occurs as a consequence of a breach by HMQ of its obligations under this Agreement;
- (g) Project Co failing to pay any sum or sums due to HMQ under this Agreement (which sum or sums are not being disputed by Project Co in accordance with Article 43 (Dispute Resolution) or Article 17 (Price, Payment and Set-Off)) and which sums or sums, either singularly or in aggregate, exceed(s) \$250,000 (index linked), and such failure continues for thirty (30) days from receipt by Project Co of a notice of non-payment from HMQ;
- (h) Project Co failing to comply with Article 34 (Prohibited Acts);

- (i) Project Co failing to comply with Article 9 (Subcontracting);
- (j) a breach by Project Co of its obligations to take out and maintain the insurance required to be maintained in accordance with Article 20 (Insurance) and **Schedule I (Insurance)** or such insurance is vitiated or otherwise ceases to be in full force and effect, and any such breach by Project Co in respect of insurance is not remedied by Project Co within ten (10) Business Days of the occurrence of the breach other than, in any of the foregoing cases, as a consequence of such coverage becoming an Uninsurable Risk;
- (k) Project Co failing to comply with Section 2.12 (Changes to Senior Financing Agreements and Refinancing) or Article 30 (Refinancing);
- (l) Project Co failing to comply with Section 41.1 (Assignments);
- (m) the occurrence of any Change in Control or a Change in Ownership which is prohibited by Article 42 (Change in Control and Change in Ownership);
- (n) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Article 43 (Dispute Resolution);
- (o) the Sub Lease is terminated in accordance with its terms by reason of a Project Co default thereunder;
- (p) at any time after the Completion Date, Project Co committing a breach of its obligations under this Agreement (other than as a consequence of a breach by HMQ of its obligations under this 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 HMQ (an “**H&S Conviction**”) provided however that:
  - (i) an H&S Conviction of Project Co, a Project Co Party or HMQ shall not constitute a Project Co Default if, within ninety (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 this Agreement or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to HMQ, in its sole discretion; and
  - (ii) in determining whether to exercise any right of termination for a Project Co Default pursuant to this paragraph (p) of the definition of Project Co Default, HMQ shall:
    - (A) act in a reasonable and appropriate 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

- (B) give all due consideration, where appropriate, to action other than termination of this Agreement; or
- (q) the occurrence of any of the following events other than as a consequence of a breach by HMQ of its payment obligations hereunder:
- (i) 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, a Project Co 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 Courthouse Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within ninety (90) days of being instituted), under any 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 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 item (q)(i);
  - (ii) 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 Agreement;
  - (iii) if any execution, sequestration, extent or other process 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 creates an Encumbrance against the Project Facilities that is not a Permitted Encumbrance; or

- (iv) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this item (q) of the definition of Project Co Default in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in item (q)(i), (ii) or (iii) of this definition of Project Co Default, constitute a Project Co Default;
- (r) Project Co failing to remove an Encumbrance (other than a Permitted Encumbrance) that arose due to an act or omission of Project Co or any Project Co Party within forty-five (45) days of the earlier of:
  - (A) the registration of such Encumbrance against title to the Site, the Project Facilities 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; or
- (s) Project Co either:
  - (A) failing to deliver a rectification plan under Section 4.17(a)(iii)(B);
  - (B) delivering a rectification plan under Section 4.17(a)(iii)(B) which indicates that Project Co will not achieve Completion by the Completion Longstop Date; or
  - (C) delivering a rectification plan under Section 4.17(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 4.17(a)(iii)(B)(II);

**“Project Co Materials”** means any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material or documents produced, acquired, brought into existence and/or used by, or on behalf of, Project Co or any Project Co Party for the purpose of providing the Service Period Works, the Project Works and/or the Special Projects Services (if applicable) and for the purpose of and use in other projects in which Project Co or any Project Co Party is involved and which is not exclusively developed or acquired for use in connection with the Project Works, Service Period Works, the Special Project Services (if any), the Project Facilities and/or the Project Operations, but excludes Jointly Developed Materials and other Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction of the Project Facilities;

**“Project Co Notice of Change”** has the meaning specified in Section 10.10 (Change in Project Works or Service Period Works);

**“Project Co Party”** means:

- (a) the Construction Subcontractor;
- (b) the Service Provider;

- (c) any person engaged by Project Co, the Construction Subcontractor, and/or the Service Provider from time to time as may be permitted by this Agreement to procure or manage the provision of the Project Operations (or any of them), including Subcontractors and Special Projects Subcontractors;
- (d) Special Projects Subcontractors;
- (e) Project Co Staff; and
- (f) 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;

“**Project Co Staff**” means any and all persons who are employed or engaged by Project Co or any Subcontractor or any Special Projects Subcontractor to work at or in relation to the Project Facilities during the Agreement Term;

“**Project Co Statutory Obligations**” has the meaning specified in Section 23.1 (Statutory Obligations);

“**Project Co’s Proposal Extracts**” means the documents attached at Part VI: Project Co’s Proposal Extracts of **Schedule B (Project Works)**, as same may be amended from time to time by mutual written agreement of the parties;

“**Project Co’s Representative**” means the person designated as such by Project Co on or prior to the Date of Agreement and any permitted replacement;

“**Project Documents**” means the following agreements:

- (a) this Agreement;
- (b) the Lenders’ Direct Agreement;
- (c) the Sub Lease;
- (d) the Ancillary Documents;
- (e) the Independent Certifier’s Contract;
- (f) the Construction Contractor’s Direct Agreement;
- (g) the Service Provider’s Direct Agreement;
- (h) the Co-ordination Agreement;
- (i) the City Lease;
- (j) any other document or agreement relating to the Project which would, pursuant to the terms of this Agreement, require the consent of HMQ; and



- (k) any other document or agreement which is an amendment of, substitution for, or replacement of any of the documents and agreements referred to in items (a) through (j) of this definition of the Project Documents.

**“Project Facilities”** means the courthouse building(s) on the Site, including the support, administrative and other facilities, Site services, utilities, roadways and parking spaces required to support such facilities, together with all supporting systems and infrastructure in respect of the foregoing relating to the courthouse building and the Site;

**“Project Management Oversight Committee”** has the meaning ascribed to it in Section 29.1(a) (Oversight Committee);

**“Project Operations”** means:

- (a) the Project Works, as well as the financing, designing (including preparing all Project Co Materials), developing, constructing, equipping, testing, commissioning and providing (including any temporary works), on a turnkey basis, a complete, commissioned and operational Project Facility, including all associated equipment, parking, other facilities and infrastructure;
- (b) the Service Period Works including the activities of or required by Project Co or any Project Co Parties in connection with operating and maintaining the Project Facilities and with the performance of its obligations under this Agreement and with providing all other services to be provided by Project Co under this Agreement; and
- (c) all other obligations of Project Co under this Agreement;

**“Project Schedule”** means the project schedule attached hereto as Schedule T;

**“Project Specific Plant and Equipment”** means the plant, machinery, fixtures, equipment, vehicles, stock and materials owned by Project Co or any Project Co Party which are specifically dedicated to or predominantly used by Project Co or the Project Co Party in respect of the Project Facilities;

**“Project Works”** has the meaning ascribed to it in the Design and Construction Procedure;

**“Proposed Agreements”** has the meaning ascribed to it in Section 13.13(d).

**“Prospective Service Tenderers”** means those persons who express an interest in being requested, or are identified by HMQ and Project Co pursuant to Section 50.4(a) (Market Testing) to prepare and submit tenders for each Market Tested Service, group of Market Tested Services or any part of any Market Tested Service (as the case may be);

**“Proprietor”** has the meaning ascribed to it in Section 48.11(a);

**“Province”** means the Province of Ontario;

“**Province Claims and Losses**” has the meaning ascribed to it Section 19.5(a);

“**Province Persons**” means HMQ, MAG, MAG Occupants, Non-MAG Occupants and, while attending in their official capacity at the Project Facilities and/or the Site, the following:

- (a) any entity to which authority is designated pursuant to Section 47.1 and any agents and employees of any such entity;
- (b) agents and employees of HMQ;
- (c) any office holder of the Crown while sitting as a member of an administrative or other tribunal conducting a hearing at the Project Facilities or the Site; and
- (d) contractors of HMQ or of any entity to which authority is delegated pursuant to Section 47.1 and subcontractors of any tier and its or their directors, officers and employees;

but excluding Project Co, any Project Co Party and the City;

“**Qualified Adjudicator**” means one of three adjudicators agreed upon by Project Co and HMQ and who are on call to resolve disputes relating to Critical Items;

“**Qualifying Bank**” means a lending institution that is:

- (a) a bank listed Schedule I, II or III of the *Bank Act* (Canada); or
- (b) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of \$500,000,000.00,

provided such institution is not a Restricted Person or a person whose standing or activities are inconsistent with MAG’s role (in its reasonable opinion) generally in the Province or with respect to the Courthouse Activities or could reasonably be expected to compromise the reputation or integrity of any of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province or are inconsistent with the nature of the Province’s justice system, so as to affect public confidence in that system;

“**Qualifying Bank Transaction**” means:

- (a) the disposition by a Senior Lender of any of its rights or interests in the Senior Lending Agreements to a Qualifying Bank;
- (b) the grant by a Senior Lender to a Qualifying Bank of any rights of participation in respect of the Senior Lending Agreements; or
- (c) the disposition or grant by a Senior Lender to a Qualifying Bank of any other form of benefit or interest in either the Senior Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“**Qualifying Refinancing**” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

“**Qualifying Service Tender**” means a tender received from a Service Tenderer in respect of Market Testing which complies with the Service Tender Requirements;

“**Realty Taxes**” means all taxes, rates, duties, levies, assessments, license fees, local improvement charges and other charges of any nature or purpose whatsoever that are from time to time, levied, rated, imposed or assessed by a Governmental Authority in respect of the Site, the Project and/or the Project Facilities or any part thereof or in respect of the occupancy or use of the Site, the Project and/or the Project Facilities or any part thereof;

“**Record Drawings**” means a complete electronic record of the final construction documents (drawings and specifications) prepared in accordance with CAD Standards that incorporates every Change and Variation to the construction documents, implemented and recorded on as-built documents, during the provision of the Project Works;

“**Record of Site Condition**” means the record of site condition filed in Ontario’s Environmental Site Registry and acknowledged in writing by the Ministry of the Environment in respect of the Site in accordance with the *Environmental Protection Act* (Ontario);

“**Recoverable Tax**” has the meaning given in Section 36.5(c);

“**Rectification Plan**” has the meaning specified in Section 31.2(c)(ii) (Default by Project Co);

“**Referring Party**” has the meaning given in Article 43 (Dispute Resolution);

“**Refinancing**” means:

- (a) any amendment, variation, supplement or replacement of any Senior Financing Agreement;
- (b) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or the creation or granting of any other form of benefit or interest in either the Senior Financing Agreement or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting Project Co’s ability to carry out any of (a)-(c) above;

“**Refinancing Date**” means the date on which a Qualifying Refinancing is effected;

“**Refinancing Financial Model**” means a comprehensive and detailed financial model satisfactory to HMQ, acting reasonably, prepared for the purpose of Article 30, 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 Article 30 (Refinancing), and taking into account:

- (a) cash flows for the entire remaining Agreement Term;
- (b) any changes in structure and funding since the date of this Agreement;
- (c) the performance of the Project Operations to the date of the Refinancing;
- (d) macroeconomic assumptions; and
- (e) all other relevant factors;

“**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 the 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 to all Relevant Persons over the remaining term of the 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 Model but without taking into account the effect of the Refinancing) to be made to all Relevant Persons over the remaining term of the Agreement following the Refinancing;

“**Reimbursement Amount**” has the meaning specified in Section 4.14(h);

“**Relevant Authority**” means any court with the relevant jurisdiction and any local, national agency, inspectorate, minister, ministry, official or public or statutory person of the Government of Ontario;

“**Relevant Change in Law**” means a Discriminatory Change in Law, a Specific Change in Law or a Relevant Works Change in Law;

“**Relevant Convictions**” has the meaning specified in **Schedule H (Background Check Requirements)**;

“**Relevant Person**” means a Shareholder or any of its Affiliates;

“**Relevant Works Change in Law**” means a change to the Building Code in force at the date of the Preferred Proponent Agreement that requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Project Facilities which is not Maintenance Work or capital replacement work which

Project Co would otherwise be required to perform in order to comply with its obligations under this 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 Agreement:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquake, hurricane, tornado, riot and civil commotion;
- (b) failure by any Utility Company, Statutory Authority, local authority or other like body to perform works or provide services required to be provided by them or any act of a Governmental Authority (other than MAG) acting or purporting to act within its authority as a Governmental Authority save to the extent such act was caused or contributed to by or resulted from Project Co or any Project Co Party or would have been prevented by the proper performance of Project Co’s obligations under this Agreement;
- (c) accidental loss or damage to the Project Works and/or Project Facilities or any roads servicing the Site;
- (d) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Agreement, any failure or shortage of power, fuel or transport;
- (e) blockade or embargo falling short of a Force Majeure Event;
- (f) an official or unofficial strike, lockout, go-slow, or other labour dispute, generally affecting the courthouse, construction, building maintenance or facilities management industry (or a significant sector of such industry) in the Province of Ontario; or
- (g) 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 against the construction and/or operation of the courthouse located on the Site,

provided, in each case, that such event does not arise (directly or indirectly) as a result of an 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 HMQ claiming relief, as a result of any act or omission of any Province Person;

“**Remedial Action**” means any actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Substances in the Environment; (b) prevent or minimize a release or a threatened release of Hazardous Substances in the Environment so they do not migrate or endanger or threaten to endanger public health or welfare or the Environment; (c) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities; or (d)

conduct any other actions with respect to Hazardous Substances authorized or otherwise required by Environmental Laws;

“**Remedial Action Plan**” means the remediation measures to be implemented as set out in the *Remedial Action Plan and Remediation Schedule* dated January 31, 2006 prepared for the City by Golder Associates Ltd., as the same may be amended from time to time;

“**Replacement FM Component**” has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Request for Special Project Services**” has the meaning specified in Section 14.1 (Special Projects Services);

“**Required Action**” has the meaning specified in Section 40.3 (Step-in Rights);

“**Required Retention Period**” has the meaning given in Article 46 (Project Co’s Records);

“**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 Senior Financing Agreements, or any of them, which does not increase any liability of HMQ, whether actual or potential;

“**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 for reasons other than its trade or economic policies;
- (b) conducts the business of illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism or other criminal activity;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder or has not otherwise met the Background Check Requirements;
- (d) 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;
- (e) is subject to a material claim of HMQ, MAG 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 HMQ’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under this Agreement; or

(f) has a material interest in the production of tobacco products;

“**Review Date**” means the date falling five (5) years after the Completion Date and every five (5) years thereafter;

“**Review Procedure**” means the review procedure described in **Schedule N (Review Procedure)**;

“**RFI**” means a request for information submitted prior to the Date of Agreement by or on behalf of Project Co to HMQ or any other agent of the Crown in respect of the Project which may have included, among other things, written questions, enquiries, requests for information, requests for clarification and/or other requested information and/or clarification;

“**RFI Responses**” means the responses of HMQ to various RFI appended as Part VIII: RFI Responses of **Schedule B (Project Works)** of this Agreement;

“**RFP**” means the request for proposals dated February 15, 2006 for the Project as amended by addendum;

“**RFP-2 Proposals**” has the meaning ascribed to it in Schedule B Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy and Commissioning Stage;

“**RST**” means the tax payable and imposed pursuant to the *Retail Sales Tax Act* (Ontario), and any successor legislation thereto;

“**Schematic Design Acceptance**” occurs when the Project Co Architect and the Design and Construction Compliance Consultant (with the concurrence of HMQ and MAG) notify Project Co that Project Co’s Final Schematic Design Submission is accepted by HMQ in accordance with the terms of this Agreement;

“**Schematic Design**” means the final schematic design which has been accepted by HMQ and MAG in accordance with the provisions of this Agreement;

“**Schematic Design Acceptance Date**” means March 27, 2007.

“**Schematic Design Components**” has the meaning ascribed to it in Section 4.2(a) of this Agreement;

“**Schematic Design Submissions**” has the meaning ascribed to it in Schedule B Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage;

“**Security Documents**” has the meaning ascribed to it in the Lenders’ Direct Agreement;

“**Senior Debt**” means the financing provided by the Senior Lenders under the Senior Financing Agreements;

“**Senior Debt Termination Amount**” has the meaning ascribed to it in **Schedule G (Calculation of Termination Payments)**;

“**Senior Financing Agreements**” means the agreements listed under Part A of **Schedule K (Initial Financing Agreements)**, which, on the Date of Agreement, are each dated as of the Effective Date, as amended from time to time in accordance with the terms of this Agreement;

“**Senior Lenders**” means the Indenture Trustee under the Trust Indenture and all lenders under each of the Senior Financing Agreements, including for greater certainty and without limiting the foregoing, the Bondholders (as such terms are defined in the Senior Financing Agreements);

“**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;

“**Service Category**” means the specific grouping of same or similar services to be provided by Project Co, as included in the HMQ Facilities Management Requirements;

“**Service Failure Points**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Service Guarantor**” means Johnson Controls, Inc.;

“**Service Period**” means the period specified in Section 3.3 (Formation and Duration of the Agreement);

“**Service Period Communications Plan**” means the communications plan established by Project Co in accordance with the terms of this Agreement which outlines PMOC’s, HMQ’s and Project Co’s responsibilities, as applicable, in respect of effective communications to the public of matters relating to the Project during the Service Period, as such plan may be updated in accordance with the terms of this Agreement;

“**Service Period Works**” means those parts of the obligations of Project Co which apply after the Completion Date and are referenced herein and in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** including any Change in Service Period Works pursuant to Article 10 (Change in Project Works or Service Period Works);

“**Service Provider**” means Johnson Controls L.P., engaged by Project Co to perform Service Period Works and any substitute service provider engaged by Project Co as permitted by this Agreement;



“**Service Provider Dispute**” has the meaning specified in Article 43 (Dispute Resolution);

“**Service Provider’s Direct Agreement**” means the direct agreement between HMQ, Project Co, the Service Provider and the Service Guarantor in the form set out in **Schedule R (Service Provider’s Direct Agreement)**;

“**Service Tender Requirements**” means the form and requirements of the tender documents to be sent to Service Tenderers as agreed or determined in accordance with the provisions of Article 50 (Market Testing);

“**Service Tender Quotes**” has the meaning specified in Section 14.1(b)(iii);

“**Service Tenderers**” means those of the Prospective Service Tenderers selected to submit tenders in accordance with Section 50.4 (Market Testing);

“**Service Tender Validity Period**” means the period within which tenders from Service Tenderers must be received if they are to be valid;

“**Set-Off Shortfall**” has the meaning specified in Section 4.14(j);

“**Shareholders**” means any person from time to time holding share capital in Project Co;

“**Site**” means the property described in Part I: Site Description of **Schedule A (Property Matters)**;

“**Site Agreement**” has the meaning specified in Section 2.23;

“**Special Projects Services**” means those works which HMQ requires after Completion which works are not Service Period Works or Project Works and may include the Special Projects Services described in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Special Projects Services Estimate**” has the meaning specified in Section 14.1 (Special Projects Services);

“**Special Projects Subcontractors**” means any subcontractor of Project Co (not being, for the avoidance of doubt, any Subcontractors appointed to provide Service Period Works or any of their respective employees or subcontractors, unless HMQ agrees that such subcontractor shall also provide Special Projects Services pursuant to Section 14.1) engaged by Project Co to provide Special Projects Services;

“**Special Projects Subcontracts**” means the agreement or agreements between Project Co and the relevant Special Projects Subcontractors providing for the performance by the applicable Special Projects Subcontractor of certain Special Projects Services pursuant to Section 14.1, subject to the provisions of Article 9 (Subcontracting);

“**Specific Change in Law**” means any Change in Law which principally affects or principally relates only to courthouse use generally in the Province of Ontario;

“**Specific Dispute**” has the meaning given in Section 43.13 (Dispute Resolution);

“**Statutory Authority**” means any person entitled to exercise statutory powers in relation to the Project Operations;

“**Step-In Period**” has the meaning set forth in the Lenders’ Direct Agreement;

“**Subcontract**” means the agreement(s) between Project Co and the relevant Subcontractors providing for the performance by the Subcontractor(s) of some or all of the obligations of Project Co hereunder, subject to the provisions of Article 9 (Subcontracting);

“**Subcontractors**” means the counterparties of Project Co to the Construction Subcontract and the counterparties of Project Co to the Operating Subcontract and any subcontractor of any other subcontractor at any tier (and does not include, for the avoidance of doubt, Special Projects Subcontractors or Third Party Contractors);

“**Sub Lease**” means the sublease in respect of the Site entered into by HMQ, as sub-landlord in favour of Project Co, as sub-tenant, in the form set out in Part II of **Schedule A (Property Matters)**;

“**Submission**” has the meaning ascribed to it in **Schedule N (Review Procedure)**;

“**Subsequent Certification Date**” has the meaning specified in Section 4.14(d);

“**Successor Project Co**” means HMQ or the person or body selected by HMQ to provide the Successor Service upon or after the Date of Agreement;

“**Successor Service**” means the services and/or works substantially similar to the Service Period Works and/or the Project Works, as the case may be, proposed by or to HMQ to be provided to HMQ by any Successor Project Co in respect of all or some part of the Project Facilities upon or after the Date of Agreement and which may include all or some part of the Service Period Works and/or the Project Works;

“**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 RST and GST except where stated to the contrary;

“**Tax Loss Consolidation Transaction**” means a transaction undertaken by Project Co with one or more of its affiliated persons (for purposes of the *Income Tax Act* (Canada)) that:

- (a) complies with the guidelines for corporate loss utilization as established by the Canada Revenue Agency in Income Tax Technical News No. 3 dated May 21, 2004; and
- (b) involves the issuance by Project Co of non-voting preference shares to a participating affiliated person and lending of proceeds received on the issuance of

the preference shares to a participating affiliated person pursuant to an interest-bearing note;

**“Technological Change”** means any technological change in the manner in which the Service Period Works are or might be maintained or provided which reduces or will reduce the net costs to Project Co (or any Subcontractor) in performing Project Co’s (or any Subcontractor’s) obligations under this Agreement for the purposes of Article 10 (Change in Project Works or Service Period Works);

**“Termination Date”** means the earlier of the Expiry Date and such earlier date, if any, on which termination of this Agreement takes effect in accordance with its terms;

**“Termination Notice”** means a notice to terminate this Agreement issued in accordance with Article 31 (Default by Project Co), Article 32 (Default by HMQ), Article 33 (Voluntary Termination by HMQ), Article 34 (Prohibited Acts) or Article 38 (Force Majeure);

**“Termination Sum”** means any compensation payable by HMQ to Project Co on an early termination of the Agreement under Article 31 (Default by Project Co), Article 32 (Default by HMQ), Article 33 (Voluntary Termination by HMQ), Article 34 (Prohibited Acts) or Article 38 (Force Majeure), in each case calculated in accordance with **Schedule G (Calculation of Termination Payments)**;

**“Third Party Contractors”** means any independent contractor (not being, for the avoidance of doubt, the Construction Subcontractor) engaged by HMQ to carry out the Third Party Works;

**“Third Party Works”** means those works in relation to the Project Facilities which:

- (a) relate to Project Building and Systems which HMQ may require Third Party Contractors to perform after an HMQ Notice of Change has been issued by HMQ to Project Co and HMQ has determined, in accordance with Section 10.6(b) to withdraw an HMQ Notice of Change in respect of such works and engage a Third Party Contractor to perform such works at the Project Facilities; or
- (b) HMQ requires prior to Completion with respect to:
  - (i) installation of information technology, communication equipment, and telephone equipment at the Project Facilities; or
  - (ii) installation of anything similar to the above:
    - (A) which is reasonably required in connection with the Project Facilities; and
    - (B) that does not fall within the scope of any Service Period Works or Project Works,

in each case to be carried out by Third Party Contractors;

“**Threshold Equity Sale Amount**” means the amount which, if paid to Project Co’s equity holders in consideration of a percentage of Project Co’s subscribed share capital, would result in an Implied Equity Value that, if received in full by Project Co’s equity holders on the day of the equity sale, taken together with all Distributions paid by Project Co in respect of its share capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR;

“**Threshold Equity Sale IRR**” means [REDACTED]%;

“**Trust Indenture**” has the meaning ascribed to it in the Lenders’ Direct Agreement;

“**Unavailability**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Unavailability Event**” has the meaning ascribed to it in **Schedule F (Payment Mechanism)**;

“**Undertakings**” has the meaning ascribed to it in Section 13.3(b) (Rights of Access on Site);

“**Undisputed Amounts**” has the meaning ascribed to it in Section 17.5 (Price, Payment and Set-off);

“**Uninsurable Risk**” has the meaning ascribed to it in **Schedule I (Insurance)**;

“**Utilities**” means water, sanitary waste and storm, water, sewage, telephone, cable and broadband and any other utility used at the Project Facilities, but excluding Energy Utilities;

“**Utilities Management Services**” has the meaning described in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;

“**Utility Company**” means any company or companies designated by Project Co to provide Utilities;

“**Variation**” means an adjustment of a minor nature to Project Co’s design after Schematic Design Acceptance which is not a change in scope, will not materially change the Schematic Design and will not, individually or in the aggregate, result in Project Co incurring material out-of-pocket costs;

“**Warning Notice**” has the meaning ascribed to it in Section 31.1(a) (Default by Project Co);

“**Works Change in Law**” means any Change in Law that:

- (a) is not a Relevant Change in Law;
- (b) occurs after the Completion Date;

- (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Project Facilities which is not Maintenance Work or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under this Agreement; and
- (d) was not reasonably foreseeable at the Date of the Preferred Proponent 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.

### 1.3 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the masculine gender includes the feminine gender and neuter gender and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) unless expressly stated to the contrary, all references to Sections, Sub-Sections and Schedules are references to Sections, Sub-Sections and Schedules of and to this Agreement, and any references to parts, tables, paragraphs, annexes or appendices within or by reference to a particular Schedule are references to the Parts, tables and paragraphs contained in, and the annexes and appendices to, that Schedule;
- (d) any reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document;
- (e) the Schedules to this Agreement (including any annexes or appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any annex or appendix thereto. For greater certainty, the obligations of each party set out in the Schedules to this Agreement form an integral part of this Agreement and all obligations of each party set out therein are obligations of such party under this Agreement;
- (f) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- (g) all references to time of day shall be a reference to the time of day in Toronto, Ontario;
- (h) the words “herein”, “hereto” and “hereunder” refer to this Agreement as a whole and not to the particular Section, Schedule, Part, paragraph, annex or appendix in which such word may be used;

- (i) any reference to a public organization and unless expressly stated otherwise shall be deemed to include a reference to any successor (public or otherwise) to such public organization or any organization or entity which has taken over the functions or responsibilities of such public organization;
- (j) a reference to a person includes firms, partnerships, corporations, governments and government agencies and their successors and permitted assignees or transferees;
- (k) references to “parties” mean the parties to this Agreement and references to a “party” mean one of the parties to this Agreement;
- (l) headings are for convenience of reference only;
- (m) references to all monetary amounts at the Date of Agreement are expressed in Canadian Dollars;
- (n) reference to “including” and “in particular” shall not be construed restrictively but shall mean “including but not limited to” and “in particular but without prejudice to the generality of the foregoing” respectively; and
- (o) references to “document” includes any written or printed work or photograph or any work produced by electronic means.

#### 1.4 Content of Agreement

- (a) This Project Agreement is comprised of this executed agreement and the following documents, all of which are incorporated by reference into and form part of this Agreement:

<b>Schedule</b>	<b>Description</b>
Schedule A	Property Matters
Part I	Site description
Part II	Form of Sublease between HMQ and Project Co
Schedule B	Project Works
Part I	Design Requirements
Part II	Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage
Part III	Furniture, Fixtures and Equipment Process
Part IV	Cash Allowance Procedure
Part V	Independent Certifier’s Contract
Part VI	Project Co’s Proposal Extracts
Part VII	Value Add Submission Requirements
Part VIII	RFI Responses
Schedule C	HMQ Outline Commissioning Plan
Schedule D	Completion Certification
Schedule E	Service Period Works

Part I	Facilities Management Specification
Part II	Handback Requirements
Schedule F	Payment Mechanism
Schedule G	Calculation of Termination Payments
Schedule H	Background Check Requirements
Schedule I	Insurance
Schedule J	Lenders' Direct Agreement
Schedule K	Initial Financing Agreements
Schedule L	Financial Model
Schedule M	Energy Matters
Schedule N	Review Procedure
Schedule O	Archaeological, Aboriginal and Heritage Sites
Schedule P	Pre-Completion Communications Plan
Schedule Q	Construction Contractor's Direct Agreement
Schedule R	Service Provider's Direct Agreement
Schedule S	Key Individuals
Schedule T	Project Schedule
Schedule U	Site Agreement
Schedule V	Food Services Facilities Plan

- (b) The documents comprising this Agreement are complimentary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of conflict, in which case Sections 1.5, 1.6 and 2.2 shall apply.
- (c) Except for those parts of Project Co's bid submissions which are incorporated by reference into this Agreement by attachment at Part VI: Project Co's Proposal Extracts of **Schedule B (Project Works)**, the RFP and Project Co's bid submission are superseded entirely by this Agreement and rendered null and void, and shall not be relied upon or used by Project Co, HMQ or anyone else (including anyone pursuant to the Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Works and the Service Period Works or any other obligations or liabilities of the parties, or anything else contained in this Agreement.

#### 1.5 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of the Agreement in effect as of the Date of Agreement, the provisions of amendments in writing to this Agreement signed by HMQ and Project Co and an HMQ Change, the provisions of such amendments or (without prejudice to the parties' obligations under Section 10.6(f)(i)) HMQ Change shall govern to the extent of the ambiguity, conflict or inconsistency and take precedence over those specific provisions of this Agreement in effect as of the Date of Agreement expressly amended thereby;
- (b) If the ambiguity, conflict or inconsistency between a provision of general application and a provision that applies only to a specific part of the Project

Works and the Service Period Works, the provision that applies to the specific part of the Project Works and the Service Period Works shall govern for that specific part of the Project Works and the Service Period Works.

#### 1.6 Conflict of Documents

In the event of any ambiguity, conflict or inconsistency between the provisions of this 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.

#### 1.7 Indexed Amounts

Except as expressly stated to the contrary references to “**indexed amounts**” or amounts or sums expressed to be “**index-linked**” or “**indexed**” are references to amounts or sums to be calculated in accordance with Article 18 (Price Indexation).

#### 1.8 Interest Act (Canada)

For the purposes of this Agreement, whenever interest is to be calculated on the basis of a period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by such other period of time.

## **ARTICLE 2 PERFORMANCE GENERALLY**

#### 2.1 Performance

In performing the Project Works or carrying out any Change to the Project Building and Systems, Project Co shall and shall ensure that each Project Co Party shall use all of the reasonable skill and care of a competent design and build contractor experienced in the design and construction of facilities similar to the Project Facilities seeking in good faith to comply with its contractual obligations, including all Applicable Law.

#### 2.2 HMQ Requirements

Project Co shall provide the Project Works and the Service Period Works in accordance with HMQ's Requirements as developed by Project Co's Proposal Extracts, provided that where there is any conflict or inconsistency between any of:

- (a) Applicable Law;
- (b) this Agreement (other than the Schedules);
- (c) HMQ's Requirements;
- (d) the Schedules to this Agreement (other than those comprising HMQ's Requirements or Project Co's Proposal Extracts); and/or



- (e) Project Co's Proposal Extracts;

then the item first appearing in the list above shall have precedence.

### 2.3 Discrepancies

As soon as reasonably practicable (and in any event within ten (10) Business Days) of becoming aware of any ambiguity, conflict or inconsistency within HMQ's Requirements, Project Co shall inform HMQ in writing of its proposals to deal with the ambiguity, conflict or inconsistency.

### 2.4 Consents

- (a) Project Co shall comply with the conditions contained in any Consent relating to the Project Operations and shall at all times be responsible for applying for and obtaining and, as applicable, renewing, all Consents relating to the Project Operations and satisfying all conditions attached to any such Consent and Project Co shall not be entitled to any additional costs consequent upon and caused by any such Consent including all costs in respect of any delay to the Project Works.
- (b) Project Co agrees that if any Governmental Authority or Applicable Laws require that one or more specific Consents for which Project Co is responsible can only be applied for by or obtained in the name of HMQ, then in all such cases the applications for Consents shall be prepared by Project Co in HMQ's name and submitted by Project Co to HMQ for review and approval prior to submitting same to the applicable Governmental Authority. HMQ will use commercially reasonable efforts to proceed expeditiously and cooperatively in conducting its review and providing its comments or approval to Project Co. Project Co agrees that it shall make such changes to the applications for Consent as HMQ may reasonably require. Project Co shall reimburse HMQ for all costs which it may incur related to such Consents.

### 2.5 Development Approvals and Consents

Without limiting Project Co's obligations under Section 2.4, Project Co shall at, its own cost and expense, (i) apply for, obtain, maintain and, as applicable, renew all Development Approvals and Consents; and (ii) comply with all Development Approvals and Consents in accordance with their terms, which, in each case, may be required for the development of the Site and the Project Facilities to achieve Completion on or before the Planned Completion Date. For greater certainty, and without limiting the generality of the foregoing, Project Co shall enter into all site plan agreements and development agreements relating to the Project Operations as may be necessary for the Development Approvals and Consents or any of the same to be obtained or maintained and shall be responsible for, and shall assume the risk in providing all required security (including letters of credit, bonds and other financial instruments) as may be necessary for the Development Approvals and Consents or any of the same to be obtained or maintained. Subject to the next following sentence, HMQ shall co-operate with and provide commercially reasonable assistance to Project Co in obtaining any such Development Approvals and Consents, to the extent that HMQ is required by Applicable Law to obtain such Development Approvals and Consents as a result of HMQ's status as sublandlord under the Sub Lease. HMQ shall not be required to provide any such assistance or co-operation where such actions would reasonably be

considered to be contrary to Applicable Law or otherwise inconsistent with the regulatory responsibilities of the Government of Ontario or any agency or delegate thereof.

## 2.6 Compliance with Applicable Law

Project Co shall (i) comply with all Applicable Law from time to time and the terms and conditions of all Consents and Development Approvals and Consents required for the Project Operations, the Project Facilities or otherwise applicable to the Project Agreement and/or the Project; and (ii) provide all required notifications to Governmental Authorities and shall facilitate all inspections of work areas by Governmental Authorities, as requested from time to time. The obligation of Project Co to comply with all provisions and other requirements under Applicable Law of Governmental Authorities does not preclude the operation of Article 22 (Change in Law) with respect to Discriminatory Changes in Law.

## 2.7 Project Co's Proposal Extracts

Project Co shall comply with the processes, procedures, plans and other requirements contained in Project Co's Proposal Extracts. Project Co shall forthwith, and in any event within two (2) Business Days of execution of same, deliver to HMQ and MAG copies of each amendment and modification to Project Co's Proposal Extracts which have been mutually agreed to by HMQ and Project Co in writing (the "**Extract Change Documents**"). Project Co shall, within five (5) Business Days after completion of the Design Development Stage agree on a list of Extract Change Documents and within five (5) Business Days thereafter, Project Co shall deliver to HMQ a complete copy of all Extract Change Documents. Extract Change Documents executed and agreed to from time to time shall automatically form part of the Project Co Proposal Extracts, without any further action required by either party.

## 2.8 Project Co Parties

Project Co shall not be relieved of any liability or obligation under this Agreement by the appointment 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, any part of the Project Operations, to comply with the obligations of Project Co to HMQ in the same manner and to the same extent as Project Co. Project Co shall include terms in all Subcontracts requiring such compliance or incorporating the terms hereof insofar as it is relevant to the scope of the Subcontract in question and Project Co shall require Subcontractors to include such terms in other Subcontracts to which those Subcontractors are party and Project Co shall enforce and require the enforcement of all such terms.

## 2.9 Other Business

Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purposes of the Project without the prior written consent of HMQ, in its sole discretion.

## 2.10 Project Documents

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.

## 2.11 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 9.1 and 34.2;
  - (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 the Agreement or that has the effect of increasing any liability of HMQ, 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 the Agreement or that have the effect of increasing any liability of HMQ, 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 2.11(a)(i),

without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 2.11(a)(i) or 2.11(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 2.11(a)(i) or 2.11(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Agreement or have the effect of increasing any liability of HMQ, 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 2.11(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 2.11(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Subcontractors, including Article 9 (Subcontracting).

## 2.12 Changes to Senior Financing Agreements and Refinancing

Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing 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 the Agreement or the Project Documents to which it is a party or have the effect of increasing any liability of HMQ, whether actual or potential, unless:

- (i) such action is a Permitted Borrowing; or

- (ii) such action is a Refinancing effected in accordance with the provisions of Article 30 (Refinancing).

### 2.13 Compliance with Senior Financing Agreements

Project Co shall keep the Senior Financing Agreements in good standing to the extent necessary to perform its obligations under this Agreement and the Project Documents to which it is a party, and shall ensure that none of the terms and conditions of the Senior Financing Agreements shall prevent Project Co from performing its obligations under this Agreement or the Project Documents to which it is a party.

### 2.14 Delivery of Project Documents

Each of Project Co and HMQ shall deliver to the other all Project Documents to which it is a party contemporaneously with the execution and delivery of this Agreement by such party. Each of the Ancillary Documents and Senior Financing Agreements shall be in form and substance satisfactory to HMQ, acting reasonably.

### 2.15 Clearance Certificates

Project Co represents and warrants on the Date of Agreement that it has received from the Construction Subcontractor a current valid Clearance Certificate. Project Co agrees that it shall, every sixty (60) days, commencing on the Date of Agreement and ending upon completion of the Project Works, obtain a valid Clearance Certificate from the Construction Contractor and, upon request, provide evidence of same to HMQ. Project Co agrees that it shall, on the Completion Date and within each sixty (60) day period thereafter and ending on the Expiry Date, obtain a valid Clearance Certificate from the Service Provider and, upon request, provide evidence of same to HMQ.

### 2.16 Key Individuals

- (a) The individuals who are critical to the performance of the Project Works are identified in Part A of **Schedule S (Key Individuals)**. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Project Works in the capacity set out in **Schedule S (Key Individuals)** and, in particular, will not, for the duration of the Project 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 reasonable opinion of HMQ, such involvement would have a material adverse effect on the Project Works.
- (b) The positions of the individuals which are critical to the performance of the Service Period Works are identified in Part B of **Schedule S (Key Individuals)**. No later than six (6) months prior to the Planned Completion Date Project Co shall deliver to HMQ a list of individuals who will perform the functions of each position set forth in Part B of **Schedule S (Key Individuals)** and Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Service Period Works and in particular, will not, for the duration of the Service Period 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 reasonable

opinion of HMQ, such involvement would have a material adverse effect on the Service Period Works.

#### 2.17 Tax Loss Consolidation Transaction

HMQ will consent to Project Co undertaking a Tax Loss Consolidation Transaction, such consent not to be unreasonably withheld, provided that such Tax Loss Consolidation Transaction does not (i) involve a disposition of assets by Project Co otherwise than to acquire the loan referenced in (b) of the definition of “**Tax Loss Consolidation Transaction**”, to pay dividends on or redeem or otherwise acquire the preference shares or to pay fees and expenses to persons who deal at arm’s length with Project Co incurred in connection with such transaction; (ii) involve an acquisition of property other than the loan amounts (in relation to the loan referenced in (b) of the definition of “**Tax Loss Consolidation Transaction**”) and preference shares received or acquired in connection therewith; (iii) involve any transaction, including anticipated future transactions such as a payment of dividends or a redemption or retraction of preferred shares, that adversely affects the ability of Project Co to perform its obligations under the Project Documents, that has the effect of increasing the liability of HMQ, whether actual or potential or that otherwise prejudices HMQ under this Agreement or under any other Project Document to which it is a party; (iv) involve any transaction or transactions with Restricted Persons; (v) involve or constitute a Qualifying Refinancing (provided that, for greater certainty, a Tax Loss Consolidation Transaction shall not constitute a Qualifying Refinancing solely because of the acquisition of the loan or preference shares, because of the payment of dividends on or the redemption of the preference shares, or because of the payment of the fees and expenses, in each case referred to in (i) and (ii)); (vi) result in a Change in Control; (vii) increase the liability of, or otherwise adversely affect, HMQ, whether actual or potential, or otherwise prejudice HMQ under this Agreement, under the Sub Lease or under any other Project Document to which it is a party; or (viii) adversely affect the ability of Project Co to perform its obligations under the Project Documents to which it is a party.

#### 2.18 Energy Model and Energy Targets

- (a) Project Co covenants and agrees that it shall deliver to HMQ, on or before March 19, 2007, an energy model along with a report detailing assumptions regarding total energy use at the Project Facilities as well as an Aggregate Energy Target at the Project Facilities, as well as such other matters as HMQ may reasonably request and to be delivered by GreenSim.
- (b) Project Co covenants and agrees that the Aggregate Energy Target and the Discrete Energy Targets will, once Project Co has achieved Schematic Design Acceptance, be at levels equal to or below those set forth in Project Co’s RFP-2 Proposals unless: (i) Project Co demonstrates to HMQ's satisfaction, utilizing the energy model referenced in Project Co's RFP-2 Proposals, that the Aggregate Energy Target and the Discrete Energy Targets have changed due to changes to the Interim Schematic Design referenced in the Preferred Proponent Agreement, which, for greater clarity, includes the MAG Design Revisions and associated energy net present value reduction of \$[REDACTED]; or, (ii) the assumptions upon which the Aggregate Energy Target and Discrete Energy Target are based are contrary to the corresponding assumptions set out in Project Co's RFP-2

Proposal. HMQ will be the initial determinant of the applicability of items (i) and (ii) above, acting reasonably and if there is a Dispute between HMQ and Project Co in respect of such determination, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Project Co further covenants and agrees that the definitions of Aggregate Energy Target and Discrete Energy Target in **Schedule M (Energy Matters)** shall be modified at such time to include the actual number representing the Aggregate Energy Target and Discrete Energy Targets as set forth in the Energy Target Letter and thereafter, any reference to Actual Energy Target and Discrete Energy Targets shall be interpreted to be a reference to such numbers.

#### 2.19 Contingency Fund

- (a) Project Co shall make available to HMQ, at any time prior to the Completion Date an amount equal to the aggregate of (i) \$[REDACTED] (the "**Insurance Contingency Amount**"), which represents the insurance premium savings realized by Project Co in respect of obtaining project specific Protective Professional Indemnity Liability Insurance instead of obtaining Project Specific Professional Errors & Omissions Liability Insurance; and (ii) such other amounts as the parties may mutually agree should be subject to a contingency fund, each acting reasonably (the "**Agreed Contingency Amount**"). Such amounts may be used to set-off any amount or amounts owed by HMQ to Project Co under this Agreement prior to the Completion Date whether in respect of costs resulting from HMQ Change Orders or otherwise.
- (b) If, after the Completion Date there is any unused portion of the Insurance Contingency Amount or the Agreed Contingency Amount, there shall be a set-off against the first Monthly Service Payment and each subsequent Monthly Service Payments (in the event that the Insurance Contingency Amount and the Agreed Contingency Amount exceed the first Monthly Service Payment) in the amount of such unused portions until such amounts are fully repaid.

#### 2.20 RFI Responses

The parties agree to comply with their respective obligations set forth in the RFI Responses.

#### 2.21 Concept Drawings and Presentation Materials

Project Co acknowledges and agrees that it shall deliver to HMQ, MAG and the Design and Construction Compliance Consultant, no later than the tenth (10<sup>th</sup>) Business Day after the Date of Agreement, the following: (A) the following concept drawings, in each case in form and substance satisfactory to HMQ, MAG and the Design and Construction Compliance Consultant, acting reasonably, and in each case, mounted and in colour: (i) elevations at a 1:200 scale; (ii) two perspectives (Bond and New Streets) (610 x 1915 mm); and (iii) interior perspectives of the lobby area of the courthouse building; which concept drawings shall, for purposes of this Agreement, be considered to be Schematic Design Submissions; and (B) presentation materials to be used by HMQ and MAG for communications, MAG stakeholder briefings and for similar purposes, such materials to be in a form or acceptable to HMQ and MAG and suitable for public presentation, which materials shall also include the following design drawings which shall also

be in form and substance satisfactory to HMQ and MAG: (i) Site Plan (1:200 scale); (ii) Floor plans at each level including basement (1:200 scale); (iii) Roof plans (1:200 scale); (iv) sections (1:200 scale); (v) one exterior perspective; and (vi) two interior perspectives of the courtrooms and waiting areas, in each case, mounted and in colour.

#### 2.22 Meeting with HMQ

Project Co acknowledges and agree that unless otherwise specifically agreed to by any of MAG, HMQ and/or an HMQ Representative if any of them attends meetings with Project Co in connection with the terms of this Agreement, any person attending such meetings who are also representatives of the Service Provider or the Construction Subcontractor (or any other Subcontractor) or if there is any other form of interaction between HMQ, MAG and/or an HMQ Representative and any such person, then such persons shall be attending such meetings or otherwise interacting in their capacity as Project Co Representative (and not in such person's capacity as representative of the Construction Subcontractor or the Service Provider, as the case may be).

#### 2.23 Site Agreement

Project Co and HMQ have entered into a site agreement dated as of March 1, 2007 in respect of certain matters relating to the remediation activities on the Site, a copy of which is attached hereto as Schedule U (the "**Site Agreement**"). Project Co and HMQ agree that the Site Agreement is in full force and effect binding upon each of them following the execution and delivery of this Agreement notwithstanding Section 51.8 hereof. The rights and obligations of Project Co pursuant to the Site Agreement shall be rights and obligations of Project Co under this Agreement, and the rights and obligations of HMQ pursuant to the Site Agreement shall be rights and obligations of HMQ under this Agreement, it being agreed that the Site Agreement shall form a part of this Agreement for all intents and purposes and that, except as provided expressly otherwise in the Site Agreement or as may be necessary to give effect to the terms of the Site Agreement, the terms of this Agreement will govern. For certainty, no breach or failure to perform an obligation under the Site Agreement shall, in the case of HMQ, give rise to a consequence or HMQ Default that would not otherwise arise under the terms of this Agreement and, in the case of Project Co, give rise to a consequence or Project Co Default that would not otherwise arise under the terms of this Agreement.

### **ARTICLE 3 FORMATION AND DURATION OF THE AGREEMENT**

#### 3.1 Effective Date

This Agreement and the rights and obligations of the parties to this Agreement shall take effect on the Effective Date.

#### 3.2 Agreement Term

The Agreement Term shall be the period commencing on the Effective Date and terminating on the earlier of:

- (a) the Expiry Date; and

- (b) the Termination Date.

### 3.3 Service Period

The Service Period shall be the period commencing on the Completion Date and terminating on the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date.

### 3.4 Independent Certifier

- (a) HMQ and Project Co shall on or after the Date of Agreement in compliance with all Applicable Law relating to procurement which is applicable to Project Co and/or HMQ appoint a suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Agreement upon terms of engagement substantially as set out in the proposed contract terms set forth in Part V: Independent Certifier of **Schedule B (Project Works)**.
- (b) The Independent Certifier must be a firm which is acceptable to both HMQ and Project Co, acting reasonably, and must be a firm which includes construction cost consulting and construction claims adjusting skills as core areas of expertise within the firm, which skills may be acquired through a joint venture or association, but not as sub-consultant to the firm. Project Co and HMQ acknowledge and agree that the Independent Certifier shall not be permitted to subcontract any of the core areas of expertise set forth above.
- (c) Each employee and representative of the Independent Certifier attending at the Project Facilities 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 paragraphs 7(c) through 7(f) of **Schedule H (Background Check Requirements)** have occurred in respect of the IC’s Representatives, HMQ 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 HMQ in writing within five (5) Business Days of the occurrence of any of the events described in paragraph 7(c) through and including 7(f) of **Schedule H (Background Check Requirements)**; or (ii) the Independent Certifier has satisfied HMQ, 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 3.4(c), HMQ terminates the Independent Certifier, Project Co agrees that it shall not permit any of the IC’s Representatives to have access to the Project Facilities;



- (d) Other than in respect of a termination by HMQ in accordance with Section 3.4(c), neither HMQ nor Project Co shall, without the other's prior written approval (not to be unreasonably withheld or delayed):
  - (i) terminate, repudiate or discharge the Independent Certifier's Contract for any reason or treat the same as having been terminated, repudiated or otherwise discharged;
  - (ii) waive, settle, compromise or otherwise prejudice any rights or claims which the other may have from time to time against the Independent Certifier; or
  - (iii) vary the terms of the Independent Certifier's Contract or the services to be performed by the Independent Certifier.
- (e) Neither HMQ nor Project Co shall, without the other's prior written approval, enter into a separate agreement with the Independent Certifier in connection with the Project.
- (f) The parties agree to co-operate with one another generally in relation to all matters within the scope of or in connection with the appointment of the Independent Certifier. 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 undertaken by, or meetings involving, the Independent Certifier. Except as otherwise provided in the Independent Certifier's Contract, all costs (including legal fees of any counsel retained by the Independent Certifier) of the Independent Certifier shall be borne between the parties equally.
- (g) In the event of the Independent Certifier's appointment expiring or being terminated, the parties shall liaise and co-operate with one another in order to appoint, in accordance with this Section 3.4(g), a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be agreed to by the parties acting reasonably. In the event that they are unable to agree within twenty (20) Business Days of the previous Independent Certifier's appointment expiring or being terminated, the matter shall be resolved in accordance with the Dispute Resolution Procedure. To the extent possible, the parties will work with the Independent Certifier in order for the Independent Certifier to continue to fulfill its obligations under the Independent Certifier's Contract until a new independent certifier is appointed by the parties.

### 3.5 City Lease

HMQ acknowledges and agrees that:

- (a) (i) it has entered into the City Lease with the City in a substantially similar form as disclosed to Project Co; (ii) the City Lease is in good standing and in full force and effect; (iii) to the best of its knowledge, neither the City nor HMQ is in default thereunder; and

- (b) it will not amend, supplement, vary, terminate, surrender or restate the City Lease without the prior written consent of Project Co, which consent may not be unreasonably withheld or delayed, provided that no consent of Project Co is required if the amendment will not materially or adversely affect the ability of Project Co to perform its obligations under this Agreement or have the effect of increasing any liability of Project Co, whether actual or potential.

#### **ARTICLE 4 DESIGN DEVELOPMENT AND CONSTRUCTION**

##### **4.1 e Room**

- (a) HMQ's Representative and the Independent Certifier and such other persons as may be necessary or appropriately given access on behalf of such persons in order to facilitate the review and inspection by HMQ of the Project Works (access by any persons other than HMQ's Representative (including for certainty, MAG Staff) and the Independent Certifier shall be subject to the prior approval of Project Co, acting reasonably), shall be given access to an e Room maintained and updated on a timely basis by Project Co.
- (b) All documents posted in the e Room shall be available in a format that can be printed by those persons requiring paper copies and all such documents shall be available in paper form on the Site for review by those persons entitled to access in accordance with Section 4.1(a).

##### **4.2 Schematic Design**

- (a) Project Co hereby agrees that HMQ shall receive, at least five (5) Business Days prior to the Schematic Design Acceptance Date, a final schematic design submission in respect of the Project Facilities (the "**Final Schematic Design Submission**") containing design, drawings, specifications and reports which, subject to any Design Adjustment, (i) is consistent with the Interim Schematic Design; (ii) includes each of the schematic design components set forth in Appendix B of **Schedule N (Review Procedure)** (collectively, the "**Schematic Design Components**"); and (iii) is consistent with the HMQ Design Requirements, in order to ensure that Schematic Design Acceptance is achieved by the Schematic Design Acceptance Date.
- (b) Project Co acknowledges and agrees that neither HMQ, MAG nor the Design and Construction Compliance Consultant owes any duty of care to Project Co in carrying out their review of any of the Schematic Design Submissions or in carrying out the review of the Final Schematic Design Submission provided by Project Co and that any discussion of or acceptance by HMQ, MAG or the Design and Construction Compliance Consultant of all or any part of any Schematic Design Submission or the Final Schematic Design Submission proposed by Project Co shall not relieve Project Co from its obligations to meet the HMQ Design Requirements or submit a Final Schematic Design Submission which is consistent with the HMQ Design Requirements through all subsequent design, construction and commissioning stages in each of the foregoing cases except to

the extent that a deviation from the HMQ Design Requirements has been expressly approved in writing by HMQ. Project Co agrees that it will cooperate with HMQ and MAG to ensure appropriate input is obtained from HMQ and MAG (in accordance with the requirements set out in this Agreement relating thereto) such that their requirements in respect of design are taken into account in the finalization of the Schematic Design.

- (c) The parties agree that once the Final Schematic Design Submission is accepted by HMQ and MAG in accordance with the terms of this Agreement, such Final Schematic Design Submission shall constitute the Schematic Design for purposes of this Agreement and shall form part of this Agreement as though an original schedule hereto.
- (d) The parties agree that once the Final Schematic Design Submission is accepted by HMQ and MAG in accordance with the terms of this Agreement, Appendix B of **Schedule F (Payment Mechanism)** of this Agreement shall be amended to include within the column "Net Square Metres per Space" the equivalent information contained in the Final Schematic Design.
- (e) Project Co hereby agrees to deliver to HMQ, within ten (10) Business Days of Schematic Design Acceptance, a narrative description of the Final Schematic Design and such written description shall form part of and be included as part of Part VI: Project Co's Proposals of **Schedule B (Project Works)** of this Agreement once such description is accepted by HMQ (acting reasonably) and without any further action required by either party hereto.

#### 4.3 Design Development Stage and Construction Document Stage

- (a) Project Co shall carry out the design (including the process for Schematic Design Acceptance) of the Project Facilities in accordance with the Design and Construction Procedure:
  - (i) so as to satisfy the HMQ Design Requirements;
  - (ii) in accordance with Project Co's Proposal Extracts; and
  - (iii) otherwise in accordance with the terms of this Agreement.
- (b) The obligations of Project Co in Sections 4.3(a)(i), (ii) and (iii) are independent obligations. In particular:
  - (i) the fact that Project Co has satisfied the HMQ Design Requirements will not be a defence to an allegation that Project Co has failed to comply with Project Co's Proposal Extracts or the terms of this Agreement; and
  - (ii) the fact that Project Co has complied with Project Co's Proposal Extracts will not be a defence to an allegation that Project Co has not satisfied the HMQ Design Requirements or complied with the terms of this Agreement.

- (c) Project Co shall ensure that those documents prepared by or for Project Co or the Project Co Architect through all design development stages (including the stages prior to Schematic Design Acceptance and for purposes of achieving Schematic Design Acceptance) and construction document stage and which are required to be provided by Project Co to HMQ pursuant to a Submission in **Schedule N (Review Procedure)** are posted in the e Room;
- (d) Project Co acknowledges and agrees that in deciding whether to accept Project Co's Final Schematic Design Submission, MAG, HMQ and the Design and Construction Compliance Consultant will take into account, among other things, Courthouse Functionality, all things prescribed in this Agreement and in that certain preferred proponent agreement between HMQ and Project Co dated December 22, 2006 (the "**Preferred Proponent Agreement**") and apparent problems that arise with the proposed design as a result of failure to comply with the HMQ Design Requirements as such failure impacts Courthouse Functionality, including the following criteria, as further defined in the Design and Construction Procedure:
  - (i) whether all components, elements, rooms, spaces and areas as designed appear to meet the functional, adjacency, security, circulation, and public space requirements described in the HMQ Design Requirements and in a manner consistent with the HMQ Requirements;
  - (ii) whether all activities intended to take place in the courthouse buildings on the Site appear to be accommodated in an efficient and effective manner, to a level of resolution corresponding to the HMQ Requirements;
  - (iii) whether the design of all building elements appear to be advanced to a stage commensurate with the level of resolution described in Section 4.3(d)(i);
  - (iv) whether it appears that further refinement of the design during the design development and construction document stages will not compromise any aspect of the schematic design of the Project Facilities, once accepted.
- (e) Project Co acknowledges and agrees that:
  - (i) neither the Design and Construction Compliance Consultant, MAG nor HMQ owes any duty of care to Project Co in carrying out their review of the various schematic design submissions and that Schematic Design Acceptance does not relieve Project Co from its obligation to meet the HMQ Design Requirements; and
  - (ii) participation by the Design and Construction Compliance Consultant or any other Province Person in the Design and Construction Procedure does not relieve Project Co from its obligation to meet the HMQ Design Requirements,

in each case except to the extent that a deviation from the HMQ Design Requirements has been expressly approved in writing by HMQ.

- (f) Notwithstanding anything to the contrary set forth in this Agreement, with respect to the ownership and property rights relating to the design of the Project Facilities:
  - (i) HMQ shall have the ownership interest in the design of the Project Facilities including any of the drawings or specifications as prepared and produced by Project Co or the Project Co Architect; and
  - (ii) HMQ hereby grants to Project Co a non-exclusive licence to use the design of the Project Facilities in connection with the Project Facilities until the Termination Date.

#### 4.4 Construction Stage

- (a) Project Co shall carry out construction of the Project Works using the skill and care of a competent design and build contractor experienced in the design and construction of facilities similar to the Project Facilities and in a manner consistent with the Schematic Design as developed by the design development and construction documents procedure to be carried out in accordance with Section 4.3, in accordance with Section 21.8(a), and in accordance with the Design and Construction Procedure; and
- (b) Up until the Completion Date, Project Co shall perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify HMQ against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto.

#### 4.5 Commissioning

- (a) Project Co shall perform all Commissioning pursuant to the Project Co Commissioning Program which has been approved by HMQ;
- (b) Project Co shall, within sixty (60) days following the Date of Agreement, advise HMQ of the Commissioning Commencement Date, which date shall be no later than the date set forth in the Project Co Commissioning Program approved by HMQ;
- (c) At least two hundred and eighty (280) days prior to the Commissioning Commencement Date, Project Co shall provide HMQ, the Design and Construction Compliance Consultant and the Independent Certifier with a draft Project Co Commissioning Program which shall contain a fully detailed plan for commissioning the Project Facilities in accordance with the minimum requirements set forth in **Schedule C (HMQ Outline Commissioning Plan)**;
- (d) The Project Co Commissioning Program shall:

- (i) comply with all requirements of the HMQ Outline Commissioning Plan and include all details, including for all appendices required to be completed in the HMQ Outline Commissioning Plan; and
  - (ii) be consistent with the HMQ Outline Commissioning Plan and impose no greater or more onerous obligations on HMQ than those set out in the HMQ Outline Commissioning Plan, unless otherwise agreed to by HMQ in writing;
- (e) HMQ shall provide Project Co with comments on the draft Project Co Commissioning Program in accordance with the Review Procedure, and Project Co shall revise the draft Project Co Commissioning Program to the extent required through the Review Procedure provided however, that the final Project Co Commissioning Program shall be in final form no later than one hundred twenty (120) days prior to the Commissioning Commencement Date; and
  - (f) Any proposed delay shall be promptly reported to the Independent Certifier and HMQ's Representative with the proposed rectification required to enable the Planned Completion Date to be met;
  - (g) Project Co shall give not less than thirty (30) days prior written notice to the Independent Certifier and HMQ of the commencement of Commissioning.

#### 4.6 Completion Plan

- (a) Project Co shall prepare a draft Completion Plan and shall provide a copy of such draft plan to the Design and Construction Compliance Consultant not less than one hundred and fifty (150) days prior to the Planned Completion Date.
- (b) The Design and Construction Compliance Consultant shall provide Project Co with comments on the draft Completion Plan in accordance with the Review Procedure and Project Co shall revise the draft Completion Plan to the extent required through the Review Procedure.
- (c) The review by the Design and Construction Compliance Consultant of any document in accordance with this Section 4.6 shall not relieve Project Co (or the Project Co Architect) of its obligations under this Agreement or any Applicable Law.
- (d) Any proposed delay shall be promptly reported to the Independent Certifier and the Design and Construction Compliance Consultant with the proposed rectification required to enable the Planned Completion Date to be met.

#### 4.7 Completion of Project Works and the Completion Certificate

- (a) Project Co shall complete the Project Works in accordance with all of the requirements set forth in each Part of **Schedule B (Project Works)** and in accordance with the Completion Plan agreed to by HMQ.

- (b) The Completion Certificate shall be issued by the Independent Certifier to HMQ and Project Co when the Project Works fulfil the Completion Criteria in accordance with Section 1.1 of **Schedule D (Completion Certification)**.

#### 4.8 Satisfaction of Completion Criteria and Issuance of Completion Certificate

- (a) Project Co shall give the Independent Certifier, the Design and Construction Compliance Consultant and HMQ each not less than thirty (30) Business Days' notice of the date on which it anticipates the Project Works will be in the condition necessary to satisfy the Completion Criteria and the dates on which it is intended that the Independent Certifier carry out the inspection of the Project Works with a view to issuing the Completion Certificate;
- (b) The Independent Certifier shall inspect the Project Facilities (including any re-inspections thereof) in accordance with the procedures for certification set forth in **Schedule D (Completion Certification)** and shall prepare a Minor Matters List, if applicable, and otherwise comply with the procedure for certification set forth in **Schedule D (Completion Certification)**;
- (c) The Independent Certifier's decision to issue or not to issue the Completion Certificate shall be final and binding on the parties solely in respect of determining the Payment Commencement Date and a dispute between the parties 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 between the parties in relation to the Independent Certifier's decision to issue or not issue the Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (d) If any deficiencies in the Project Works with respect to the Completion Criteria or any part thereof are identified by the Independent Certifier during the course of the inspection referred to in Section 4.8(a) (as conducted in accordance with the requirements set forth in **Schedule D (Completion Certification)**) as requiring attention so as to enable the Completion Criteria to be achieved, Project Co shall attend to the matters contained in the Independent Certifier's report delivered pursuant to **Schedule D (Completion Certification)** forthwith. Project Co shall as soon as possible thereafter give notice of re-inspection and (i) the provisions of Sections 4.8(a) and 4.8(b) shall apply also to such re-inspection except that the reference to thirty (30) Business Days shall be construed as five (5) Business Days and a new Minor Matters List, as required to be delivered pursuant to **Schedule D (Completion Certification)**, shall be prepared and delivered prior to any re-inspection by the Independent Certifier; and (ii) the provisions of Section 4.8(a) shall also apply to such re-inspection. This Section 4.8(d) shall be applied repeatedly until the Completion Certificate is issued.

#### 4.9 Record Drawings

Project Co shall provide HMQ with a full set of Record Drawings and associated documents not later than six (6) months after the Completion Date. Record Drawings shall be reviewed by HMQ in accordance with the Review Procedure. Except as otherwise specifically required to be

delivered on the Completion Date, as set forth in Section 1.1 of **Schedule D (Completion Certification)**, Project Co shall provide HMQ with a full set of As-Built Drawings and associated documents not later than ninety (90) days after the Completion Date.

#### 4.10 Discretion of the Independent Certifier

- (a) Up until completion of the Project Works, the Independent Certifier shall serve the “Functions” as set out in the Independent Certifier’s Contract and in accordance with the terms of the Independent Certifier’s Contract and this Agreement. Without limiting the generality of such Functions, the Independent Certifier shall be entitled to issue day to day field instructions and determine any dispute between HMQ and Project Co relating to the Project Works, upon request being made therefore by either HMQ or Project Co relating to the interpretation of:
- (i) this Agreement as it relates to design development matters and construction matters generally, including, for certainty, review of Submissions (as such term is defined in **Schedule N (Review Procedure)**) and matters related thereto in connection with the Project Works as set forth in **Schedule N (Review Procedure)**;
  - (ii) the Schematic Design and whether any design requirements set forth in the Schematic Design are being complied with and interpretation of the intent of the HMQ Design Requirements (to the extent there is a dispute between HMQ and Project Co in respect of the interpretation of same);
  - (iii) any proposed Change and delays in construction of the Project Facilities resulting from such Changes;
  - (iv) whether any proposed work constitutes a Change or Variation; and
  - (v) review of Estimates and any other matters relating to Changes and Variations as the Independent Certifier is entitled to review and determine pursuant to Article 10 (Change in Project Works or Service Period Works);

Any dispute relating to the matters set forth in this Section 4.10(a) shall first be submitted to the Independent Certifier by either party for determination.

- (b) Unless otherwise specifically provided in the Agreement, the Independent Certifier shall make any such decisions as soon as reasonably practical in the circumstances but, in any event, no later than five (5) Business Days after the matter is referred to the Independent Certifier for determination. Any decision of the Independent Certifier pursuant to this Section 4.10 shall be binding on the parties. Except as set forth in Section 4.8(c), if either party disputes any determination of the Independent Certifier, such matter may be referable to the Dispute Resolution Procedure, except that a party will be conclusively deemed to have accepted the decision of the Independent Certifier unless, within ten (10) Business Days of receipt of the Independent Certifier’s written decision, the



disputing party issues a Notice of Dispute in accordance with the Dispute Resolution Procedure.

- (c) The parties shall, except to the extent they are not capable of performing their respective obligations under this Agreement directly as a consequence of the matter in Dispute, continue to comply with, observe and perform all of their obligations hereunder and under the Project Documents to which they are a party regardless (without prejudice to Project Co's rights in respect of the dispute, including in respect of Delay Events, Compensation Events and Changes) of the nature of the Dispute and notwithstanding referral of the Dispute for determination by the Independent Certifier, PMOC or the Adjudicator.
- (d) During the period between the Date of Agreement and completion of the Project Works, the Independent Certifier shall have the discretion to refer any issue which it is entitled to decide upon pursuant to this Agreement and the Independent Certifier's Contract to the PMOC, if the Independent Certifier determines, in its sole discretion, that such matter is an urgent matter. Any issue which is referred by the Independent Certifier to the PMOC for discussion and determination in accordance with this Section 4.10 and not resolved by the PMOC within five (5) days of the date on which the matter is referred to the PMOC, may be determined by the Independent Certifier in accordance with the terms hereof.
- (e) Notwithstanding anything in Section 4.10(a), the Independent Certifier may determine any other matter which both HMQ and Project Co have jointly determined shall be reviewed and determined by the Independent Certifier.
- (f) If the Independent Certifier refuses to provide a decision or fails to provide a decision within the time period provided in Section 4.10(a) (in circumstances where the matter has not been referred to the PMOC for resolution), then either party will be free to proceed directly to the Dispute Resolution Procedure.
- (g) In respect of any decision made by the Independent Certifier in accordance with the terms of this Agreement, the parties will comply with such decision but such compliance shall be without prejudice to either party's rights at law or under this Agreement.

#### 4.11 Archaeological, Aboriginal and Heritage Sites

- (a) Without limiting the generality of 4.11(e), Project Co shall comply with the Government of Ontario's Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery (Appendix 1 to **Schedule O (Archaeological, Aboriginal and Heritage Sites)**) and the Cultural Heritage Protocol Agreement between the Ministry of Government Services & the Ministry of Culture & Communications (Appendix 2 to **Schedule O (Archaeological, Aboriginal and Heritage Sites)**), to the extent that either or both may be relevant to the performance by Project Co of its obligations under this Agreement.

- (b) The Guidelines and Protocol shall be deemed to be a supplement to, and not in substitution for, compliance with the requirements of the *Cemeteries Act*, the *Ontario Heritage Act*, the regulations under those Acts, and all other legislation applicable to the construction of the Project Facilities.
- (c) Where in the Guidelines or Protocol set out on **Schedule O (Archaeological, Aboriginal and Heritage Sites)** a reference is made to “Toronto” or to any person or organization having jurisdiction in Toronto, that reference shall be construed to mean a reference to the Regional Municipality of Durham or the equivalent person or organization having corresponding jurisdiction in the Regional Municipality of Durham.
- (d) As between the HMQ and Project Co, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of HMQ.
- (e) Upon the discovery of any item referred to in Section 4.11(d) during the Agreement Term, Project Co shall:
  - (i) immediately inform the HMQ Representative of such discovery;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Project Works or Service Period Works in so far as performing such Project Works or Service Period Works would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iv) comply with and ensure compliance by all Project Co Parties with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including **Schedule O (Archaeological, Aboriginal and Heritage Sites)**.
- (f) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 4.11(a) and 4.11(e), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (g) If Sections 4.11(a), 4.11(e) or 4.11(f) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Works or the Project Facilities a result of such discovery and which would not otherwise be required under this Agreement, then any such alteration, addition, demolition, extension or variation in the Project Works or the Project Facilities shall, only to the extent it causes a delay in achieving Completion by the Planned Completion Date, and subject to and in accordance with Article 25 (Delay Events), be treated as a Delay Event and shall, subject to and in accordance with Article 26 (Compensation Events), be treated as a Compensation Event.

4.12 LEED Certification

- (a) Project Co shall elect to pursue LEED Silver Certification from CaGBC and shall register the Project with CaGBC within sixty (60) days after the Date of Agreement.
- (b) Project Co shall perform and complete the Project Works and the Project Facilities to obtain, and Project Co shall apply to the CaGBC and shall obtain, LEED Silver Certification for the Project Facilities and the Project as soon as possible, and in any event within twenty-four (24) months after the Completion Date.
- (c) Project Co shall achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Silver Certification and except as set out in subsection 4.12(d) and in the HMQ Design Requirements, may in its discretion determine which credits and points to pursue.
- (d) Project Co shall at a minimum achieve four (4) points for “Credit 1 – Optimize Energy Performance” under the Performance Category: Energy & Atmosphere under the LEED Rating System.
- (e) HMQ acknowledges that as of the Date of Agreement, Project Co is seeking to obtain from the City the following credits under the LEED Rating System:
  - (i) “Credit 1 – Sustainable Sites” under the Performance Category Sustainable Sites;
  - (ii) “Credit 2 – Development Density” under the Performance Category: Sustainable Sites;
  - (iii) “Credit 3 – Redevelopment of Contaminated Sites” under the Performance Category: Sustainable Sites; and
  - (iv) “Credit 4.1 – Alternative Transport, Public Transport Access” under the Performance Category: Sustainable Sites.

In respect of the credits set out in Sections (i), (ii), (iii) and (iv) of this Section 4.12(e) above, upon request from Project Co, HMQ shall in a timely manner prepare and deliver such information, documents and materials and provide such other assistance as Project Co may reasonably require relative to such credits and HMQ shall bear its own costs in respect thereof. HMQ acknowledges that Project Co is relying on obtaining the credits set forth in Sections (i), (ii), (iii) and (iv) of this Section 4.12(e) above in order to achieve LEED Silver Certification and if, despite commercially reasonable efforts in performing Project Co’s obligations in this Section 4.12(e), Project Co fails to achieve such credits then, to the extent of such failure, Project Co shall be relieved of its obligation to obtain LEED Silver Certification.

- (f) If after application is made for registration with the CaGBC within the time provided in Section 4.12(a), there is a change in the requirements for achievement of LEED Silver Certification under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify HMQ of such change and the Independent Certifier shall determine if such change is a Variation or a Change.

#### 4.13 Liquidated Damages Re: Failure to Achieve LEED Silver Certification

- (a) In the event that LEED Silver Certification is not obtained within twenty-four (24) months after the Completion Date, Project Co shall pay to HMQ liquidated damages in the amount of \$[REDACTED] unless Project Co has delivered a certificate, certified by an Expert appointed pursuant to Section 4.13, that Project Co has (notwithstanding that an application to CaGBC by Project Co for LEED Silver Certification has been made to CaGBC by Project Co but such certificate has not been received from CaGBC), performed and completed the Project Works and the Project Facilities in the manner required to obtain all necessary prerequisites, credits and points under the LEED Rating System (in accordance with the specific requirements set forth in this Agreement) in order for Project Co to achieve LEED Silver Certification.
- (b) The parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ 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 HMQ as a result of Project Co not achieving LEED Silver Certification. The parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages and that HMQ shall not have any obligation to mitigate such damages.

#### 4.14 LEED for Existing Buildings Gold Certification

- (a) Project Co shall, on or before the fifth anniversary of the Completion Date, register the Project Facilities for LEED for Existing Building Certification program with the agency responsible for overseeing the program in Canada at that time. Project Co shall provide evidence thereof to HMQ, such evidence to be in form and substance satisfactory to HMQ;
- (b) Project Co shall obtain, on or before the seventh anniversary of the Completion Date, LEED EB Certification of the Project Facilities (the "**Original Certification**") and shall obtain LEED EB Certification of the Project Facilities on each six year anniversary of the Original Certification and in the year prior to the Expiry Date;
- (c) Project Co shall reapply for LEED EB Certification of the Project Facilities on each five year anniversary of the Original Certification;

- (d) Project Co shall achieve all necessary prerequisites, credits and points under the LEED EB Rating System required to achieve LEED EB Certification on or before the seventh anniversary of the Completion Date and on each sixth year anniversary of the Original Certification (each a "**Subsequent Certification Date**") and, except as set out in 4.14(e) and in the HMQ Design Requirements, Project Co may in its discretion determine which credits and points to pursue;
- (e) Project Co shall, at a minimum, achieve Gold certification under the LEED EB Rating System;
- (f) Project Co will at the time of its Original Certification application and any re-certification application, seek to obtain at least forty-eight (48) of the following credits under the LEED EB Rating System (as set by the United States Green Build Council) or, if Canada Green Build Council has developed a LEED EB Certification program in Canada, the equivalent credits under the LEED EB Rating System as set by the Canada Green Build Council:

#### **Sustainable Sites**

- (i) Credit 1.1 - Plan for Green Site & Building Exterior Management – 4 specific actions;
- (ii) Credit 2 - High Development Density Building & Area;
- (iii) Credit 3.1 - Alternative Transportation – Public Transportation Access;
- (iv) Credit 3.2 - Alternative Transportation – Bicycle Storage & Changing Rooms;
- (v) Credit 5.1 - Stormwater Management – 25% Rate and Quantity Reduction;
- (vi) Credit 6.1 - Heat Island Reduction – Non-Roof;
- (vii) Credit 6.2 - Heat Island Reduction – Roof;
- (viii) Credit 7 - Light Pollution Reduction.

#### **Water Efficiency**

- (i) Credit 1.1 - Water Efficient Landscaping – Reduce Water Use by 50%;
- (ii) Credit 3.1 - Water Use Reduction – 10% Reduction;
- (iii) Credit 3.2 - Water Use Reduction – 20% Reduction.

#### **Energy & Atmosphere**

- (i) Credit 1.1 - Optimize Energy Performance – Energy Star 63;
- (ii) Credit 1.2 - Optimize Energy Performance – Energy Star 67;

- (iii) Credit 1.3 - Optimize Energy Performance – Energy Star 71;
- (iv) Credit 1.4 - Optimize Energy Performance – Energy Star 75;
- (v) Credit 1.5 - Optimize Energy Performance – Energy Star 79;
- (vi) Credit 1.6 - Optimize Energy Performance – Energy Star 83;
- (vii) Credit 3.1 - Building Operation & Maintenance – Staff Education;
- (viii) Credit 3.2 - Building Operation & Maintenance – Building Systems Maintenance;
- (ix) Credit 3.3 - Building Operation & Maintenance – Building Systems Monitoring;
- (x) Credit 4 - Additional Ozone Protection;
- (xi) Credit 5.1 - Performance Measurement – Enhanced Metering (4 specific actions);
- (xii) Credit 5.2 - Performance Measurement – Enhanced Metering (8 specific actions);
- (xiii) Credit 5.4 - Performance Measurement – Emission Reduction Reporting;
- (xiv) Credit 6 - Documenting Sustainable Building Cost Impacts

**Materials & Resources**

- (i) Credit 1.1 - Construction, Demolition & Renovation Waste Management – Recycle 50%;
- (ii) Credit 1.2 - Construction, Demolition & Renovation Waste Management – Recycle 75%;
- (iii) Credit 3.1 - Optimize Use of IAQ Compliant Products – 45% of Annual Purchases;
- (iv) Credit 3.2 - Optimize Use of IAQ Compliant Products – 90% of Annual Purchases;
- (v) Credit 4.1 - Sustainable Cleaning Products & Materials – 30% of Annual Purchases;
- (vi) Credit 4.2 - Sustainable Cleaning Products & Materials – 60% of Annual Purchases;
- (vii) Credit 4.3 - Sustainable Cleaning Products & Materials – 90% of Annual Purchases;

- (viii) Credit 5.1 - Occupant Recycling – Recycle 30% of the Total Waste Stream;
- (ix) Credit 5.2 - Occupant Recycling – Recycle 40% of the Total Waste Stream;
- (x) Credit 5.3 - Occupant Recycling – Recycle 50 % of the Total Waste Stream;
- (xi) Credit 6 - Additional Toxic Material Source Reduction – Reduced Mercury in Light Bulbs.

**Indoor Environment Quality**

- (i) Credit 1 - Outside Air Delivery Monitoring;
- (ii) Credit 3 - Construction IAQ Management Plan;
- (iii) Credit 5.1 - Indoor Chemical & Pollutant Source Control – Reduce Particulates in Air System;
- (iv) Credit 5.2 - Indoor Chemical & Pollutant Source Control – High Volume Copy/Print/Fax Room;
- (v) Credit 6.1 - Controllability of Systems – Lighting;
- (vi) Credit 6.2 - Controllability of Systems – Temperature & Ventilation;
- (vii) Credit 7.1 - Thermal Comfort – Compliance;
- (viii) Credit 7.2 - Thermal Comfort – Permanent Monitoring System;
- (ix) Credit 9 - Contemporary IAQ Practice;
- (x) Credit 10.1 - Green Cleaning – Entryway Systems;
- (xi) Credit 10.2 - Green Cleaning – Isolation of Janitorial Closets;
- (xii) Credit 10.3 - Green Cleaning – Low Environmental Impact Cleaning Policy;
- (xiii) Credit 10.4 - Green Cleaning – Low Environmental Impact Pest Management Policy;
- (xiv) Credit 10.5 - Green Cleaning – Low Environmental Impact Pest Management Policy;
- (xv) Credit 10.6 - Green Cleaning – Low Environmental Impact Cleaning Equipment Policy.

**Innovation in Operating & Upgrades**

- (i) Credit 1.1 - Innovation in Operation & Upgrades;
  - (ii) Credit 2 - LEED™ Accredited Professional.
- (g) If after the Date of Agreement there is a change in the requirements for achievement of LEED EB Certification under the LEED EB Rating System, and Project Co is required by HMQ to comply with such change, then Project Co shall notify HMQ of such change and the provisions of Article 10 (Changes) shall apply thereto to the extent such change in the requirements results in an increase in costs to Project Co to achieve LEED EB Certification hereunder and, in such case, HMQ shall serve on Project Co an HMQ Notice of Change. For certainty, the development of a LEED for Existing Building Upgrades and Maintenance certification program by Canada Green Building Council, and the requirement hereunder to obtain LEED EB Certification under such program shall not be considered to be a change in the requirements for achievement of LEED EB Certification solely by reason of the development of such program in Canada, provided that if there is a material change to the requirements for any specific credits required to achieve LEED EB Certification in Canada, the provisions of Article 10 (Changes) shall apply thereto to the extent such change in the requirements constitutes a change which results in an increase in costs to Project Co to achieve LEED EB Certification hereunder, and, in such case, HMQ shall serve on Project Co an HMQ Notice of Change. If HMQ has notified Project Co that it is not required to proceed with obtaining LEED EB Certification under the Canadian LEED EB Rating System and is only required to obtain LEED EB Certification under the United States LEED EB Rating System, the immediately preceding sentence shall be of no application and shall not apply to the parties hereto;
- (h) In the event that LEED for Existing Buildings Gold certification is not obtained by Project Co on or before the seventh anniversary of the Completion Date, Project Co agrees that there shall be a reduction to the Annual Service Payment for the eighth year of the Agreement Term in an amount equivalent to the amounts previously paid to Project Co by HMQ on account of LEED EB for the previous seven (7) years (as noted in the LEED Payment Table below subject to indexation based upon CPI) together with interest on such amounts at the rate of [REDACTED]% per annum from the dates of payment until the seventh (7<sup>th</sup>) anniversary of the Completion Date (the "**Reimbursement Amount**"). The Reimbursement Amount shall be repaid to HMQ by way of a set-off against the Monthly Service Payment (or Monthly Service Payments, if necessary) for the eighth year (and subsequent years, if necessary) of the Agreement Term commencing in the month following the seventh anniversary of the Completion Date until fully repaid.
- (i) If, Project Co has obtained LEED EB Certification on or before the end of the seven year anniversary of the Completion Date but has failed to obtain LEED EB Certification in any subsequent year as required pursuant to Sections 4.14(b) and



4.14(d) hereof, Project Co agrees that there shall be a reduction to the Annual Service Payment for the Contract Year of the Agreement Term immediately following the Contract Year in which LEED EB Certification was required to be obtained (each such date is referred to herein as the "**LEED EB Certification Date**") in an amount equivalent to the amounts previously paid to Project Co by HMQ on account of LEED EB for the previous years since LEED EB Certification was previously obtained (as noted in the LEED Payment Table below subject to indexation based upon CPI) together with interest on such amounts at the rate of **[REDACTED]**% per annum from the dates of payment until the applicable LEED EB Certification Date. Such amount shall be repaid to HMQ by way of set-off against the Monthly Service Payment (or Monthly Service Payments, if necessary) for the next following year (and subsequent years if necessary) of the Agreement Term commencing in the month following the applicable LEED EB Certificate Date until fully repaid.

- (j) If LEED EB Certification is not obtained on or before the seven year anniversary of the Completion Date or on any Subsequent Certification Date, Project Co shall not be paid the amount included in the Annual Service Payments for the remaining years of the Agreement Term on account of LEED EB and there shall be a reduction to the Annual Service Payment for the remaining years of the Agreement Term (as noted in the LEED Payment Table below subject to indexation based on CPI) and if there are no remaining Contract Years or the remaining Monthly Service Payments are not sufficient to set-off the full amount (such amounts the "**Set-Off Shortfall**"), Project Co shall, on or before the end of the Agreement Term, reimburse the Set-Off Shortfall to HMQ; such requirement to pay the Set-Off Shortfall shall survive termination of this Agreement. Such reductions in, and set-off against, the Annual Service Payment and Monthly Service Payments (as noted in this Section 14.4(j)) or payment of the Set-Off Shortfall, as applicable, shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of Project Co not achieving LEED for Existing Buildings Gold certification by the seventh (7<sup>th</sup>) anniversary of the Completion Date or on a Subsequent Certification Date, as applicable.
- (k) The parties agree that any reduction in the Annual Service Payment and Monthly Service Payments, as applicable, as set forth in Section 4.14 shall be made whether or not HMQ incurs or mitigates it damages and that HMQ shall not have any obligation to mitigate such damages.

<b>LEED PAYMENTS</b>	
<u>Year</u>	<u>Total</u>
1	<b>[\$[REDACTED]]</b>
2	<b>[\$[REDACTED]]</b>
3	<b>[\$[REDACTED]]</b>
4	<b>[\$[REDACTED]]</b>
5	<b>[\$[REDACTED]]</b>
6	<b>[\$[REDACTED]]</b>
7	<b>[\$[REDACTED]]</b>
8	<b>[\$[REDACTED]]</b>

9	[\$REDACTED]
10	[\$REDACTED]
11	[\$REDACTED]
12	[\$REDACTED]
13	[\$REDACTED]
14	[\$REDACTED]
15	[\$REDACTED]
16	[\$REDACTED]
17	[\$REDACTED]
18	[\$REDACTED]
19	[\$REDACTED]
20	[\$REDACTED]
21	[\$REDACTED]
22	[\$REDACTED]
23	[\$REDACTED]
24	[\$REDACTED]
25	[\$REDACTED]
26	[\$REDACTED]
27	[\$REDACTED]
28	[\$REDACTED]
29	[\$REDACTED]
30	[\$REDACTED]

4.15 Greenhouse Gas Credits

Any greenhouse gas credits which may be granted as a result of the Project shall be owned by HMQ and Project Co shall have no entitlement to any of such credits whatsoever.

4.16 Pre-Completion Communications Plan

Project Co and HMQ shall, and shall cause each of their respective representatives on PMOC to, in respect of all communications matters, comply with the Pre-Completion Communications Plan.

4.17 Failure to Maintain the Project Schedule

- (a) Without limiting any other provision of this Agreement, but subject to Article 25 (Delay Events), if at any time:
  - (i) the actual progress of the Project Works has significantly fallen behind the Project Schedule; or
  - (ii) HMQ is of the opinion that:
    - (A) the actual progress of the Project Works has significantly fallen behind the Project Schedule; or

- (B) Project Co will not achieve Completion by the Completion Longstop Date,

Project Co shall be required:

- (iii) within five (5) Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
  - (A) a report identifying the reasons for the delay; and
  - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
    - (I) achieve Completion by the Planned Completion Date; or
    - (II) if Completion will not be achieved by the Planned Completion Date, achieve Completion by the Completion Longstop Date; and
- (iv) to bring the progress of the Project Works back on schedule in accordance with the plan delivered in accordance with Section 4.17(a)(iii)(B) and approved by the HMQ Representative.

## **ARTICLE 5 PREPARATION FOR OPERATION**

### **5.1 Operational Protocol**

- (a) Not later than ninety (90) days prior to the Planned Completion Date, Project Co shall submit to HMQ and the Independent Certifier a draft Operational Protocol which shall be reviewed by HMQ in accordance with the Review Procedure.
- (b) Project Co shall comply with all of its obligations with respect to the Operational Protocol.

### **5.2 Service Period Communications Plan**

- (a) Not later than ninety (90) days prior to the Planned Completion Date, Project Co shall submit to HMQ a draft Service Period Communications Plan which shall be reviewed by HMQ in accordance with the Review Procedure. This plan will support effective communications between Project Co and HMQ, and with MAG stakeholders and the greater Durham community.
- (b) The draft Service Period Communications Plan shall provide, at a minimum, that Project Co's communications role will include the following:
  - (i) provide identified, dedicated communications contacts with applicable communications skills and experience with twenty-four (24) hours a day and seven (7) days a week availability;

- (ii) provide identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel as required with twenty-four (24) hours a day and seven (7) days a week availability on applicable aspect of communications;
- (iii) respond to communications issues in accordance with agreed timeframes;
- (iv) review and/or provide communications and/or technical materials including reasonable requests by PMOC for web site content;
- (v) update internal/external stakeholders as required, including involvement and participation in community events as required;
- (vi) direct all media enquiries and interview requests to PMOC's lead communications contact;
- (vii) maintain a written record of all material public enquiries, complaints and communications and provide copies to PMOC's lead communications contact on a weekly basis (or immediately, if urgent);
- (viii) report to PMOC on communications matters on an as agreed upon basis; and
- (ix) during an Emergency Event, Project Co will use commercially reasonable efforts to make available sufficient resources to effectively and proactively manage and perform its communications responsibility during a crisis, including twenty-four (24) hours a day and seven (7) days a week availability,

and shall otherwise include, among other things:

- (x) a description of Project Co's approach to all communications aspects of the Project during the Service Period;
  - (xi) a description of Project Co's communications team, including the roles and responsibilities for each team member and any subcontractors who will provide any aspect of the communications program; and
  - (xii) identification of proposal communication tools (e.g. types of information materials, website, audio-visual, presentations, events) to be used to keep the community informed, and a schedule for implementation during the Service Period.
- (c) The Service Period Communications Plan shall be updated annually and reviewed and approved by HMQ in accordance with the Review Procedure.
- (d) Project Co shall comply with all of its obligations with respect to the Service Period Communications Plan (as it may be amended from time to time in accordance with the terms of this Agreement).

### 5.3 Precedence of HMQ Facilities Management Requirements

Notwithstanding any other provision of this Article 5, the HMQ Facilities Management Requirements shall take precedence over any Operational Protocol or any Service Period Communications Plan submitted, developed or put into operation by Project Co. Accordingly, upon Project Co becoming aware of any conflict between the HMQ Facilities Management Requirements and any such Operational Protocol or any such Service Period Communications Plan, it shall as soon as reasonably practicable, give written notice to HMQ with details of the conflict and shall amend its methods to remove such conflict. Any such amendment shall be without cost to HMQ and shall not give rise to any entitlement of Project Co to any increase in any Monthly Service Payment or any other payment.

### 5.4 Review Generally

The review by HMQ of any document in accordance with this Article 5 or in accordance with the Review Procedure shall not relieve Project Co of any of its obligations under this Agreement or any Applicable Law.

## **ARTICLE 6 FF&E AND PROJECT ASSETS**

### 6.1 Supply of New MAG FF&E Prior to Completion

- (a) Project Co shall supply and install the New MAG FF&E at the Project Facilities in accordance with the terms of this Agreement and in particular in accordance with Part III: Furniture, Fixture and Equipment Process of **Schedule B (Project Works)** and Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.
- (b) Each party shall co-operate fully with the other party in relation to the physical and operational interfaces between New MAG FF&E, any other assets of HMQ, MAG and Non-MAG Occupants and the Project Facilities.
- (c) Project Co shall pay the applicable vendor or vendors of the New MAG FF&E pursuant to the terms of the applicable procurement documents. HMQ shall reimburse Project Co for the cost of the New MAG FF&E (other than A/V Equipment) arranged for purchase by Project Co prior to the Completion Date in accordance with the terms of this Section 6.1 and in accordance with Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.
- (d) Project Co shall pay the applicable vendor or vendors of the A/V Equipment pursuant to the applicable procurement documents. HMQ shall reimburse Project Co for the cost of the A/V Equipment arranged for purchase by Project Co prior to Completion in accordance with Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.

### 6.2 Procurement and Installation of New MAG FF&E During the Service Period

- (a) At the request of HMQ from time to time during the Service Period, Project Co shall arrange for the purchase and installation of New MAG FF&E for the Project

Facilities from preferred suppliers of HMQ, for the removal of replaced FF&E in accordance with the procedure set forth in Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)**.

- (b) Any request by HMQ to Project Co to arrange for the purchase and installation of New MAG FF&E for the Project Facilities pursuant to Section 6.2(a) shall:
  - (i) be provided by HMQ to Project Co at least ninety (90) days prior to the date in which HMQ requires such purchase and installation to be completed;
  - (ii) set out the New MAG FF&E items that HMQ requires Project Co to arrange for purchase and installation into the Project Facilities and the date on which HMQ requires such New MAG FF&E to be purchased and installed into the Project Facilities.
- (c) Within twenty (20) days of receipt by Project Co of any HMQ request received pursuant to Section 6.2(b), Project Co shall provide HMQ with detailed procurement documents for every New MAG FF&E item to be purchased for the Project Facilities as set forth in Section 2 of Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)** and shall otherwise comply with the requirements set forth in Section 2 of such schedule. The procurement documents delivered by Project Co to HMQ in accordance with the terms hereof and the terms of Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)** shall be subject to review and approval by HMQ and shall include provisions that the vendor shall submit all invoices in respect of items purchased directly to HMQ or as HMQ may otherwise direct. If Project Co receives invoices directly from any vendor of FF&E, it shall forthwith and in any event within three (3) Business Days of receipt thereof, deliver same to HMQ or as HMQ may otherwise direct from time to time.
- (d) Project Co's management fee for the services provided pursuant to Section 6.2(a) is as set forth in Section 17.7.

### 6.3 Replacement of New MAG FF&E

HMQ may, at any time during the Agreement Term, instruct Project Co to sell any or all items of New MAG FF&E on terms and at a price acceptable to HMQ. The Monthly Service Payment Invoice for the next Contract Month shall credit HMQ for the amount received by Project Co in connection with the sale of such New MAG FF&E.

### 6.4 Installation of FF&E

Except for New MAG FF&E, all FF&E will be installed into the Project Facilities by HMQ or an agent or agents of HMQ, at HMQ's cost. Any damage to the Project Facilities which is caused, directly or indirectly, as a consequence of such installation by a person other than Project Co or a Project Co Party (which shall be determined by the Independent Certifier or the PMOC (if the Independent Certifier is no longer retained by Project Co and HMQ)), shall be at the sole cost and expense of HMQ.

#### 6.5 Removal of FF&E

- (a) At HMQ's request, Project Co will remove any unserviceable FF&E items (which shall be determined in the sole discretion of HMQ) from the Project Facilities.
- (b) FF&E shall not be removed by Project Co from the Project Facilities without the prior written consent of the HMQ Representative, provided that if the failure to remove would cause Deductions to be made by HMQ or would result in the award of Service Failure Points, such failure to provide consent shall be deemed to be an Excusing Cause.
- (c) Except in respect of removal of New MAG FF&E as part of Project Co's obligation to purchase and install New MAG FF&E in accordance with Section 6.2(a), the cost of removal by Project Co of FF&E from the Project Facilities shall be borne by HMQ. Project Co's management fee for the removal services is included in the management fees for services delivered by Project Co as set forth in Section 6.2(a) and specified in Section 6.2(d).
- (d) Project Co shall not move or otherwise dispose of any FF&E located on the Site or otherwise at the Project Facilities without the prior written consent of HMQ.

#### 6.6 Condition of FF&E

Project Co shall not be responsible for the condition of any FF&E to meet the Commissioning requirements set forth in this Agreement or to satisfying any of the maintenance requirements set out in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** other than (a) New MAG FF&E arranged for purchase by Project Co and installed into the Project Facilities by Project Co; and (b) FF&E which has been otherwise installed into the Project Facilities by Project Co (but not otherwise arranged for purchase by Project Co in accordance with Section 6.1, Part IV: Cash Allowance Procedure of **Schedule B (Project Works)** or in accordance with Part III: Furniture, Fixtures and Equipment of **Schedule B (Project Works)**), provided that in the case of the FF&E referenced in item (b) of this Section 6.6, such FF&E was in good and serviceable condition at the time it was received by Project Co for installation, as determined by the Independent Certifier.

#### 6.7 Handback of New MAG FF&E

Project Co shall comply with all requirements to maintain and service New MAG FF&E as may be provided in this Agreement and shall handback and transfer all of its rights, title and interest in and to the New MAG FF&E (including assignment of vendor warranties in respect thereof) to HMQ on the Expiry Date or earlier termination of this Agreement, in each case, for nil consideration.

#### 6.8 Ownership of FF&E, etc.

Project Co acknowledges and agrees that neither Project Co nor any Project Co Party has or will at any time have an ownership interest in and to (i) the FF&E; (ii) A/V Equipment or the A/V Systems; (iii) the MAG and HMQ display systems, art and artifacts installed at the Project Facilities by Project Co in accordance with Part IV: Cash Allowance Procedure of **Schedule B**

**(Project Works)**; or (iv) the Durham Regional Police Services radio communications systems conduits installed at the Project Facilities in accordance with Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.

#### 6.9 Provision of Project Assets

Project Co will provide such Project Assets as may be required to fulfill its obligations under the terms of this Agreement, carry out the Project Operations in accordance with this Agreement and facilitate an effective operational hand-over in accordance with Article 37 (Termination or Expiry of Agreement Term).

#### 6.10 Good and Serviceable Condition of Project Assets

- (a) The Project Assets shall at all times be the responsibility of Project Co and shall be kept in good and serviceable condition in accordance with the terms of this Agreement and in particular in accordance with the requirements set forth in the HMQ Facilities Management Requirements and Part II: Handback Requirements of **Schedule E (Service Period Works)**. For the avoidance of doubt, Project Co shall comply with the Life Cycle Renewal Services requirements set forth in the HMQ Facilities Management Requirements in respect of the Project Assets.
- (b) If any Project Asset is not kept in good and serviceable condition in accordance with the requirements of this Agreement, including, for certainty, the requirements set forth in the HMQ Facilities Management Requirements and Part II: Handback Requirements of **Schedule E (Service Period Works)**, it shall be replaced as required pursuant to this Agreement and such replacement shall be the responsibility of Project Co. Such replacement Project Assets shall be maintained in good and serviceable condition Normal Wear and Tear excepted. To the extent that the Project Assets will meet the Handback Requirements set forth in Part II: Handback Requirements of **Schedule E (Service Period Works)** at the time in which the Project Assets are handed back to HMQ at the end of the Agreement Term, obsolescence of the Project Assets shall not be interpreted to mean that the Project Assets are not in good and serviceable condition. Any uninsured damage to the Project Assets caused by the actions or omissions of Province Persons or Courthouse Service Users in the Discrete Courthouse Areas shall be the responsibility of HMQ and HMQ shall bear the cost for the repair and/or replacement of same (or if such damage is insured, HMQ shall be responsible for payment of the deductible relating to such insurance claim).

#### 6.11 Minimizing Disruptions

Project Co shall perform its arrangement for purchase, delivery, installation, commissioning, maintenance, repair, decommissioning, upgrade and replacement of FF&E (to the extent performed by Project Co or any Project Co Party pursuant to the terms of this Agreement or as a result of separate arrangements between HMQ and Project Co or HMQ and a Project Co Party (as arranged by Project Co)) so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Works, the Service Period Works and performance of the Courthouse Activities. Project Co acknowledges and agrees that such activities will require work outside of



normal working hours in order to accommodate the efficient operation of the Project Facilities and minimize disruption of the Courthouse Activities.

#### 6.12 Title, GST and RST

- (a) The procurement arrangements for New MAG FF&E shall provide for a direct transfer of title to the New MAG FF&E from suppliers to MAG.
- (b) MAG will provide funds to Project Co for the payment of all New MAG FF&E invoiced by suppliers, including all applicable GST and RST within the time for payment by HMQ for New MAG FF&E as required by this Agreement.
- (c) Where MAG has provided to Project Co a valid certification for GST exemption and/or RST exemption, Project Co shall provide such documentation to the suppliers in order to effect the eligible GST and/or RST exemptions. If subsequently it is determined that such GST or RST, as the case may be, is applicable, then HMQ and/or MAG shall pay such GST and/or RST, as the case may be, or reimburse Project Co therefor within the time for payment by HMQ for New MAG FF&E in accordance with the requirements set forth in this Agreement.

#### 6.13 Vendors of Record of New MAG FF&E and A/V Equipment

- (a) HMQ and Project Co shall agree, acting reasonably, on a list of HMQ vendors of record to provide New MAG FF&E and A/V Equipment. HMQ acknowledges and agrees that it will be reasonable for Project Co not to accept a vendor of record if (i) the vendor of record will not provide a 100% performance bond or alternative security in favour of HMQ with the Construction Subcontractor named as dual obligee or beneficiary, as the case may be, thereunder; and (ii) the vendor of record will not include a provision in its purchase order/agreement whereby it agrees to execute and deliver, under seal, to the Construction Subcontractor a covenant to and in favour of the Construction Subcontractor that such vendor of record will perform its obligations under such purchase order/agreement. If (i) Project Co does not agree on any of the HMQ vendors of record to provide New MAG FF&E or A/V Equipment, as applicable or (ii) the prices and other terms and conditions of sale offered by the supplier in respect of the items to be supplied under the purchase order/agreement are less favourable than its commitment as a vendor of record to the Government of Ontario, then Project Co shall tender the New MAG FF&E supply contract or A/V Equipment supply contract, as applicable, to a supplier or suppliers acceptable to HMQ and MAG (such acceptance not to be withheld unreasonably) under a competitive process consistent with Government of Ontario practice for the purchase of goods and services. Where Project Co is, for any reason, unable to tender the New MAG FF&E supply contract or A/V Equipment supply contract, as applicable, in accordance with the immediately preceding sentence, Project Co shall tender the New MAG FF&E supply contract or A/V Equipment supply contract, as applicable, to a supplier acceptable to OIPC and MAG (such acceptance not to be withheld unreasonably) pursuant to an alternative competitive process satisfactory to OIPC and MAG in their reasonable discretion. Project Co acknowledges and

agrees that all contracts for the supply of FF&E and/or A/V Equipment under this Agreement shall be between MAG and the applicable supplier, notwithstanding that such supplier is not on the Government of Ontario's vendor of record list.

- (b) Project Co acknowledges and agrees that the price and other terms and conditions of sale offered by a supplier under a purchase order/agreement shall, in all circumstances, be no less favourable than such supplier's commitment as the vendor of record of the Government of Ontario for the supply of FF&E and/or A/V Equipment (to the extent the supplier is also on the Government of Ontario's vendor of record list) or be no less favourable than a supplier that is on the Government of Ontario's vendor of record list for the supply of FF&E and/or A/V Equipment and, in either case, HMQ may reject the use of any vendor (including, for certainty, a vendor that is on the Government of Ontario's vendor of record list for the supply of FF&E and/or A/V Equipment) on the basis that such terms and conditions are less favourable.

## **ARTICLE 7 PROVISION OF THE SERVICE PERIOD WORKS**

### **7.1 Supply of Service Period Works**

- (a) Subject to the other provisions of this Agreement, Project Co shall from and including the Completion Date supply or cause the supply of the Service Period Works in accordance with the terms of this Agreement and as the same is more particularly described in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** to HMQ and HMQ shall accept the same and make payment for the Service Period Works subject to the terms of this Agreement.
- (b) Project Co shall perform the Service Period Works so as to coordinate with the operations of the Province Persons on the Site and in the Project Facilities and shall use commercially reasonable efforts not to adversely interfere with the operations of any Province Person, including the performance of Courthouse Activities.

## **ARTICLE 8 EMERGENCY EVENTS AND SECURITY MATTERS**

### **8.1 Emergency Events**

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

- (a) shall, subject to Article 10 (Change in Project Works or Service Period Works) (if compliance with such plan constitute a Change), comply with such portions of the Emergency Response Plan as may be appropriate;
- (b) shall, subject to Article 10 (Change in Project Works or Service Period Works) (if compliance with such plan constitute a Change), comply with any additional or overriding procedures as may be determined or notified to it by HMQ or by any other statutory body (whether such procedures are specific to the particular Emergency Event 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 8.1(a)); and
- (c) shall, subject to Article 10 (Change in Project Works or Service Period Works) (if compliance with such requirements constitutes a Change), comply in particular with any requirements of HMQ with respect to confidentiality to the extent that the Project Co Parties have been provided with such requirements.

## 8.2 Unauthorized Entry

Except in relation to any of the Project Co Parties, Project Co shall take the steps required by HMQ's Representative (to the extent same is not the responsibility of the Durham Regional Police Services at the Project Facilities) in compliance with Applicable Law which Project Co is lawfully able to take to prevent unauthorized persons being admitted (other than Project Co Parties) to the Project Facilities. If HMQ's Representative gives Project Co notice that any particular person (other than emergency services personnel such as the Durham Regional Police Services, fire and ambulance services) is not to be admitted, Project Co shall (insofar as it is lawfully able to do so) without any compensation being paid to Project Co:

- (a) take all steps to prevent that person being admitted; and
- (b) shall remove such person if such person has been admitted,

provided that, in the case of (a) and (b) above, such functions are not otherwise the responsibility of the Durham Regional Police Services at the Project Facilities.

## 8.3 Project Co Staff

- (a) If Project Co has complied with the provisions of **Schedule H (Background Check Requirements)** in relation to a particular member of Project Co Staff and HMQ requires that a member of Project Co Staff be removed from the Project Facilities on the grounds of public interest and/or security, Project Co shall remove such member of Project Co Staff from the Project Facilities and any such removal and the direct consequences of such removal will be, subject to and in accordance with Article 27 (Excusing Causes) treated as an Excusing Cause if the removal occurs after the Completion Date and only to the extent such removal interferes adversely with, or causes a failure of, the performance of the Service Period Works.

- (b) If Project Co has not complied with the provisions of **Schedule H (Background Check Requirements)**, in relation to a particular member of Project Co Staff and HMQ requires that member of Project Co Staff be removed from the Project Facilities on the grounds of public interest and/or security Project Co shall remove such member of Project Co Staff from the Project Facilities but any such removal will not be treated as an Excusing Cause.

#### 8.4 Photographs/Visual Records

- (a) Project Co shall:
  - (i) not (other than prior to completion of the Project Works for design or construction purposes or otherwise in connection with the proper carrying out of the Project Works prior to Completion) take any photographs or other visual records of the Project Facilities or the Site or any part thereof unless Project Co has obtained the prior written consent of HMQ, MAG and Durham Regional Police Services, such consent not to be unreasonably withheld or delayed;
  - (ii) take all steps necessary to ensure that no such photographs or other visual records taken pursuant to Section 8.4(a)(i) be published or otherwise circulated by any person employed or engaged by it, unless Project Co has obtained the prior written consent of HMQ's Representative, such consent not to be unreasonably withheld or delayed; and
  - (iii) not use the names or any identifying logos or otherwise of HMQ or MAG or HMQ's Representative in any advertising or permit them so to be used except with the prior written consent of HMQ.
- (b) On or after the Completion Date (except as specifically required to carry out Project Co's obligations as a provider of security services in accordance with the terms of this Agreement), no photographing or filming in or upon the Project Facilities shall be given or permitted by Project Co unless HMQ has given its prior written approval.

### **ARTICLE 9 SUBCONTRACTING**

#### 9.1 Subcontracting

- (a) Project Co shall not at any time subcontract any interest in this Agreement, (including, for certainty, pursuant to the Construction Subcontract, the Operating Subcontract or any Special Projects Subcontracts) without the prior written consent of HMQ, not to be unreasonably withheld or delayed. No subcontracting by Project Co, the Construction Subcontractor, the Service Provider, any Special Projects Subcontractor or any other Subcontractor at any other tier shall be permitted where that person or any of its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with MAG's role (in its reasonable opinion) generally in the Province or is inconsistent with the

Courthouse Activities, or could reasonably be expected to compromise the reputation of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province or the integrity of the Durham Consolidated Courthouse or are inconsistent with the nature of the Province's justice system, so as to affect public confidence in that system. Notwithstanding the foregoing, the consent of HMQ (not to be unreasonably withheld or delayed) shall be required in respect of any Subcontract entered into between (i) the Construction Subcontractor and any of its Subcontractors; and (ii) the Service Provider and any of its Subcontractors, if, in either case, such subcontracts are subcontracts for all or a material portion of the Project Works or the Service Period Works, respectively, which are to be performed by Project Co pursuant to the terms of this Agreement.

- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Subcontractor or the Service Provider unless Project Co has complied with Sections 2.11(a), 9.1(d) and 9.1(e) and 9.1(i) or received the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (c) Project Co shall not terminate, agree to the termination of or replace any Special Projects Subcontractor unless Project Co has complied with Sections 9.1(d), 9.1(e) and 9.1(i) or has received the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (d) Project Co shall provide notice to HMQ if either the Construction Subcontractor or the Service Provider subcontract all or substantially all of their obligations under or in their respective Subcontracts or if Project Co subcontracts all or substantially all of its obligations under or in respect of its Special Projects Subcontracts.
- (e) If the Subcontract for any person referred to in Sections 9.1(b) or 9.1(c) 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 such person shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to HMQ's prior written consent, acting reasonably, as to the suitability of the replacement. Any such appointment shall be subject to compliance with Sections 9.1(a) and 9.1(i).
- (f) Project Co shall be directly responsible for the management and supervision of all Subcontractors and of all Special Projects Subcontractors.
- (g) The giving of consent by HMQ pursuant to the requirements set forth in this Article 9 shall not relieve Project Co from any of its obligations under this Agreement or in respect of Special Project Services to be delivered by Project Co or any Special Projects Subcontractors nor render HMQ in any way liable to any Subcontractor or to any Special Projects Subcontractor or in any way bound by the terms of any Subcontract or any Special Projects Subcontract and Project Co shall remain liable for Project Co's obligations under this Agreement and in respect of Special Project Services in which Project Co has been retained to provide pursuant to Article 14 (Special Project Services and Third Party Works).

- (h) For the avoidance of doubt, the further consent of HMQ shall be required pursuant to Section 9.1(a) before any amendment is made to the nature or scope of services to be performed under any Ancillary Document or Special Projects Subcontract to which HMQ has previously given its consent if such amendment will materially and adversely affect the ability of Project Co to perform its obligations under this Agreement or has the effect of increasing any liability of HMQ, whether actual or potential.
- (i) It is a condition of replacement of any person referred to in Section 9.1(b) that, and Project Co shall require that, such person 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 to the applicable Direct Agreement are approved by HMQ, acting reasonably. It is a further condition of any subcontract of all or a material part of the Service Period Works to be performed by Project Co as described in the HMQ Facilities Management Requirements that the subcontractor enter into a direct agreement that is substantially in the form of the Service Provider's Direct Agreement. It is a further condition of any subcontract of all or a material part of the Project Works to be performed by Project Co that the subcontractor enter into a direct agreement that is substantially in the form of the Construction Contractor's Direct Agreement. For greater certainty, it is not intended that any Subcontractors enter into Direct Agreements with HMQ except the Construction Subcontractor, the Service Provider and any other person to which all or a material portion of the Service Period Works or the Project Works, respectively are subcontracted by Project Co or any of its Subcontractors as provided for above.
- (j) HMQ hereby consents to the engagement by Project Co of (a) PCL Constructors Canada Inc. to perform the Project Works pursuant to the Construction Subcontract; and (b) Johnson Controls L.P. to perform the Service Period Works pursuant to the Operating Subcontract.

## **ARTICLE 10**

### **CHANGE IN PROJECT WORKS OR SERVICE PERIOD WORKS**

#### **10.1 HMQ Changes**

- (a) In addition to HMQ's rights under Article 14 (Special Projects Services), HMQ has the right to require changes in the Project Works, the Service Period Works and the Project Building and Systems in accordance with this Article 10. If HMQ requires such a change, it must serve an HMQ Notice of Change on Project Co. Project Co shall not be obliged to implement a Change if:
  - (i) implementation of the proposed Change set forth in the HMQ Notice of Change would (A) be illegal or contrary to Applicable Laws; (B) cause to be revoked any existing Consent required by Project Co to perform the Project Works and the Service Period Works, and such Consent is not, Project Co using commercially reasonable efforts, capable of amendment or renewal; or (C) would require a new Consent for Project Co to perform

the Project Works, the Service Period Works or change to the Project Building and Systems, which Consent will not, Project Co using commercially reasonable efforts, be obtainable; or

- (ii) implementation of the Change set forth in the HMQ Notice of Change would put at risk any personnel or equipment or any part of the Project Works and/or the Service Period Works.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 10.1(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 10.3, deliver to HMQ written notice specifying the grounds upon which Project Co rejects the HMQ Notice of Change and details thereof.

## 10.2 HMQ Notice of Change

Any HMQ Notice of Change shall:

- (a) set out the Change required in sufficient detail to enable Project Co to calculate and provide the Estimated Change in Project Costs in accordance with Section 10.3 below;
- (b) in the event the Change will require Capital Expenditure, state whether HMQ intends to pay Project Co the costs involved in implementing the Change or whether HMQ requires Project Co to use commercially reasonable efforts to obtain funding for all or part of the Change in accordance with Section 10.7 below, or a combination thereof; and
- (c) require Project Co to provide HMQ within fifteen (15) Business Days of receipt of the HMQ Notice of Change with the Estimate.

## 10.3 Estimate

As soon as practicable and in any event within fifteen (15) Business Days after having received an HMQ Notice of Change, Project Co shall deliver to HMQ the Estimate. Unless the HMQ Notice of Change requires only specified limited information, the Estimate shall include the opinion of Project Co on and information related to:

- (a) whether relief from compliance with obligations under this Agreement is required, including the obligations of Project Co to (i) achieve Completion by the Planned Completion Date, if applicable, or (ii) supply the Service Period Works in accordance with this Agreement during the implementation of the Change.
- (b) whether any Consents (or amendments to Consents) are required to (i) implement the Change; (ii) commence work on the Change; or (iii) provide the Project Works or the Service Period Works following implementation of the Change and, in each case, the estimated time for obtaining or amending same;

- (c) any impact on the performance of the Project Works or the provision of the Service Period Works;
- (d) any Estimated Change in Project Costs that result from the Change including any mark-up for such costs as set forth in Section 10.4 below;
- (e) any loss of revenue that results from the Change;
- (f) the Direct Costs to be paid or incurred by Project Co or any Project Co Party specifically relating to, or attributable to, the proposed Change, including:
  - (i) any Capital Expenditure that is required, no longer required or reduced as a result of the Change and the impact on Project Co's cash flows from incurring or avoiding such costs (whether financed by Project Co or HMQ); and
  - (ii) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows as the result of incurring, reducing or avoiding such costs;
- (g) Project Co's confirmation that:
  - (i) the proposed Change will not affect its financing; or
  - (ii) if the proposed Change increases Project Co's costs, then Project Co's existing financing is adequate or that Project Co requires new or additional financing, and if new or additional financing is required, Project Co's indication as to the availability of financing for the Change;
- (h) any amendments to this Agreement (including **Schedule F (Payment Mechanism)**) or any Project Document required as a consequence of the Change, the objective of such amendments being to ensure that (save for the obligation of HMQ to make payments or altered payments in respect of the Change) the parties are in no better and no worse position in relation to the Project than they would have been in if the Change had not been implemented and, in particular, that the rate of return after taking the Changes into account will be the Financial Model Equity IRR as shown in the Financial Model at the Date of Agreement and there will be no material adverse change to the risk profile of the Project as a result of the Change;
- (i) the steps Project Co will take to implement a Change, in such detail as is reasonable and appropriate in the circumstances;
- (j) any impact on expected usage of Energy Utilities and Utilities for the current Contract Year and subsequent Contract Years;
- (k) Project Co's confirmation that, in respect of a Change prior to the Completion Date, Project Co will either:



- (i) require payments to be made by HMQ (in connection with work completed by Project Co or its Subcontractors during the period prior to the Completion Date) by way of lump sum payment; or
  - (ii) require payments to be made by HMQ (in connection with work completed by Project Co or its Subcontractors during the period prior to the Completion Date) by way of an adjustment to the Monthly Service Payment; and
- (l) if Project Co has confirmed, pursuant to Section 10.3(k), that it would like an adjustment to the Monthly Service Payment, and in the case of all other Changes not described in Section 10.3(k) above, Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Change;

in each case, together with such supporting information and justification as is reasonably required by HMQ.

#### 10.4 Agreement Re: Estimate and Relief

- (a) As soon as practicable and in any event within thirty (30) days after HMQ receives the Estimate (or such longer period as may be agreed to by HMQ, acting reasonably, based on the complexity of the Change or if Competitive Tender Quotes are required to be obtained pursuant to Section 10.4(d)), the parties shall discuss and agree with respect to the issues set out in the Estimate, and Project Co shall provide additional evidence and information, to HMQ's satisfaction, acting reasonably, in respect of same, including:
- (i) providing evidence that Project Co has used or has obliged its Subcontractors (or will oblige any Subcontractors not yet selected) to use commercially reasonable efforts (including (where practicable) the use of competitive quotes or tenders if appropriate) for an HMQ Notice of Change issued in respect of a change to the Service Period Works or in respect of the Project Building and Systems) to minimize any increase in costs and maximize any reduction in costs;
  - (ii) demonstrating how any Capital Expenditure to be incurred is being measured in a cost-effective manner;
  - (iii) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the HMQ Notice of Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under Section 10.3(d) and/or 10.3(e) and/or 10.3(f) above;
  - (iv) demonstrating that all costs of Project Co and its Subcontractors to implement the Change are limited to Direct Costs;

- (v) sufficient information to satisfy HMQ that Project Co, the Construction Subcontractor and the Service Provider shall charge only the margins for overhead and profit as set out in Section 10.4(b) hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of the Construction Subcontractor or the Service Provider are calculated on any other margin of the Construction Subcontractor or the Service Provider), and no other margins or mark-ups;
  - (vi) the margins for overheads and profit set out in Section 10.4(b) hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Subcontractor or the Service Provider;
  - (vii) evidence that all costs of providing Project Works and Service Period Works, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Change to the extent that Competitive Tender Quotes are not required to be provided;
    - (B) any and all changes to the HMQ Facilities Management Requirements; and
    - (C) any and all changes in risk allocation;
  - (viii) evidence that Project Co has mitigated or will mitigate the impact of the Change, including on the Project Schedule, the performance of the Project Works and the Service Period Works and the Direct Costs to be incurred; and
  - (ix) evidence that the full amount of any and all expenditures that have been reduced or considered (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Change, have been taken into account and applied in total to reduce the amount of all costs and Monthly Service Payments.
- (b) Project Co, the Construction Subcontractor and the Service Provider shall charge only the margins for overhead and profit as set forth below:

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$[REDACTED]</i>	<i>For projects between \$[REDACTED] and \$[REDACTED]</i>	<i>For projects over \$[REDACTED]</i>
Project Co (Own Work (which, for certainty, does not include management fees))	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Subcontractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Subcontractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Service Provider (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Service Provider (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

- (c) In the discussions referenced in Section 10.4(a), HMQ may within ten (10) Business Days after discussions in accordance with Section 10.4(a) have concluded, modify the HMQ Notice of Change in writing for any matter relating to the Estimate or the discussions related thereto. If HMQ modifies the Notice of Change pursuant to the terms of this Section 10.4(c), Project Co shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, notify HMQ of any consequential changes to the Estimate, if any, and confirm that it agrees to the content of the Estimate. If HMQ does not modify the Notice of Change pursuant to the terms of this Section 10.4(c), Project Co and HMQ shall, within fifteen (15) Business Days after the discussions referred to in Section 10.4(a) have concluded, agree on the Estimate (including any amendments to the Estimate agreed to be the parties).
- (d) If, based on the Estimate received pursuant to Section 10.3, the estimated increase in Capital Expenditure in respect of the Change in respect of the Service Period

Works or the Project Building and Systems is expected to exceed Cdn \$[REDACTED] HMQ may, within ten (10) days after receipt of the Estimate, require Project Co to seek and evaluate competitive tenders for the relevant Capital Expenditure (the “**Competitive Tender Quotes**”) and provide same to Project Co within fifteen (15) Business Days (or such longer period as may be agreed to by HMQ, acting reasonably, based on the complexity of the Change). HMQ is not obligated to approve the retention of the services of any person providing a Competitive Tender Quote.

- (e) In the event HMQ and Project Co do not agree on the Estimate (as it may have been revised pursuant to Section 10.4(c)), (i) if the Change is a change to the Project Works, at any time after the parties are required to agree on the Estimate (as such Estimate may be revised pursuant to Section 10.4(c)), provided that the HMQ Notice of Change has not been withdrawn pursuant to Section 10.6(b), the Independent Certifier shall make a determination as to whether the Estimate is fair and proper without any obligation on HMQ to issue an HMQ Change Order; or (ii) if the Change is a change to the Service Period Works or the Project Building and Systems, at any time after the parties are required to agree on the Estimate (as such Estimate may be revised pursuant to Section 10.4(c)), either party may (unless, in either case, the HMQ Notice of Change is withdrawn pursuant to Section 10.6(b)) refer the matter to an Adjudicator who shall make a determination as to whether the Estimate (as it may have been revised pursuant to Section 10.4(c)) is fair and proper in accordance with the Dispute Resolution Procedure without any obligation on HMQ to issue an HMQ Change Order. The Independent Certifier’s determination may be disputed by either party pursuant to the Dispute Resolution Procedure, except that a party will be conclusively deemed to have accepted the decision of the Independent Certifier unless, within ten (10) Business Days of receipt of the Independent Certifier’s written decision, the disputing party issues a Notice of Dispute in accordance with Dispute Resolution Procedure.
- (f) With respect to an HMQ Notice of Change which proposes changes to Project Works, if HMQ and Project Co have not agreed with respect to any relief to which Project Co is entitled, the Independent Certifier shall (to the extent not considered and resolved by PMOC) make the determination as to whether Project Co shall be entitled to any relief from compliance with its obligations hereunder. Any decision of the Independent Certifier pursuant to this Section 10.4(f) shall be binding on the parties, however it may be disputed by either party pursuant to the Dispute Resolution Procedure, except that a party will be conclusively deemed to have accepted the decision of the Independent Certifier unless, within ten (10) Business Days of receipt of the Independent Certifier’s written decision, the disputing party issues a Notice of Dispute in accordance with the Dispute Resolution Procedure.
- (g) With respect to an HMQ Notice of Change which proposes changes to the Service Period Works or the Project Building and Systems, if HMQ and Project Co have not agreed with respect to any relief from compliance with its obligations hereunder (as the result of any potential delay in providing Service Period

Works), the matter may be referred by either party to the Dispute Resolution Procedure.

#### 10.5 Implementation of Change

Project Co shall comply with Good Industry Practice and the HMQ Facilities Management Requirements, as applicable, with the objective of endeavouring to obtain (using its reasonable efforts) best value for money (taking into account all relevant circumstances including, in particular, the requirement that Project Co should not be worse off as a result of implementation of the Change) when procuring any work, services, supplies, materials or equipment required in relation to the Change and to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to HMQ, including all commercially reasonable efforts to mitigate such costs.

#### 10.6 Confirmation of Estimate and Withdrawals of an HMQ Notice of Change

- (a) As soon as practicable, and in any event within twenty (20) Business Days after the contents of the Estimate (as it may have been revised pursuant to Section 10.4(c)) was agreed to by HMQ and Project Co in accordance with Section 10.4(c), HMQ shall either:
  - (i) issue an HMQ Change Order; or
  - (ii) withdraw the HMQ Notice of Change by written notice to Project Co.
- (b) HMQ may, notwithstanding any determination made by the Independent Certifier, PMOC or the Adjudicator pursuant to any provision of this Article 10, at any time after an HMQ Notice of Change has been issued, withdraw any HMQ Notice of Change. In such case, if the works referenced in an HMQ Notice of Change constitute Third Party Works, HMQ may, notwithstanding receipt of Competitive Tender Quotes from Project Co, proceed with such works referenced in the HMQ Notice of Change by retaining a Third Party Contractor to perform same.
- (c) If HMQ does not issue an HMQ Change Order within the twenty (20) Business Day period specified in Section 10.6(a) in respect of the applicable Estimate, then the HMQ Notice of Change shall be deemed to have been withdrawn.
- (d) If an HMQ Change Order is not issued for an HMQ Notice of Change in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, including, if applicable, obtaining Competitive Tender Quotes, HMQ shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparation of the Estimate and obtaining Competitive Tender Quotes (including, without limitation, reasonable design costs).
- (e) Unless HMQ specifically agrees in writing to an increase in the Monthly Service Payments as a result of an HMQ Notice of Change, there shall be no increase in the Monthly Service Payments as a result of such Change being implemented as a result of HMQ issuing an HMQ Change Order and the funding of such Change

shall, subject to Section 10.9, be made in accordance with Section 10.7. Any increase to the Monthly Service Payments agreed to by HMQ in respect of an HMQ Change Order shall be made in accordance with Section 10.11.

- (f) Upon the HMQ Change Order being issued, subject to confirmation that such Change Order is effective pursuant to Section 10.6(g), and, if applicable, upon Project Co obtaining financing pursuant to Section 10.7:
  - (i) the parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Agreement necessary to implement the Change, including in respect of any required extension of time agreed to by HMQ and Project Co as set out in the Estimate; and
  - (ii) Project Co shall implement the Change as provided for in the HMQ Change Order and, all provisions of this Agreement applicable to the Project Works and the Service Period Works shall apply to the Project Works and the Service Period Works as thereby changed;
- (g) If an HMQ Change Order is subject to Project Co obtaining financing pursuant to Section 10.7, then the HMQ Change Order shall not be effective until:
  - (i) Project Co obtains financing acceptable to Project Co and the Senior Lenders; or
  - (ii) HMQ in its sole discretion waives such requirement.
- (h) The decision to issue any HMQ Change Order shall be a matter for HMQ's sole discretion.

#### 10.7 Funding of Capital Expenditures

- (a) In the event that the Estimate (as modified) involves Capital Expenditure then (unless HMQ has elected to fund such costs itself in accordance with Section 10.2(b)) Project Co shall, subject to Section 10.9(a), use its commercially reasonable efforts to obtain funding for the whole of the estimated Capital Expenditure on terms reasonably satisfactory to it and the Senior Lenders. In particular, Project Co shall use all reasonable efforts to utilize, in accordance with their terms, any available stand-by facility or "head room" in any loan facilities, however described, which is or becomes available to finance Changes during the period up to the Completion Date, insofar as such stand-by facility or "head room" is not committed or reserved to fund cost overruns on the Project Works or otherwise.
- (b) If Project Co has used commercially reasonable efforts to obtain funding for the whole of the estimated Capital Expenditure but has been unable to do so within forty-five (45) days of the date on which the HMQ Change Order was issued, Project Co shall have no obligation to carry out the HMQ Change unless HMQ agrees, within twenty (20) days of the end of such period, to pay the costs for which funding is not available on the basis provided in Section 10.8 below or

unless HMQ is obligated to proceed with the Change pursuant to the terms of this Agreement (in which case payment for the Change shall be governed by Section 10.8).

- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ with details of such financing, and HMQ may, in its sole discretion, determine whether Project Co should proceed with such financing. If HMQ determines that Project Co should not proceed with such financing, then Project Co shall have no further obligations to obtain financing for the Change and any HMQ Change Order subject to financing shall no longer have any effect unless HMQ, in its sole direction, waives the requirement for financing.
- (d) HMQ may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent Project Co has obtained funding for part of the Capital Expenditure, the remaining part of the funding of the estimated Capital Expenditure.
- (e) If HMQ waives the requirement for financing or Project Co has no further obligation to obtain financing for the HMQ Change Order pursuant to this Section 10.7, then Project Co shall proceed with the Change as set out in the HMQ Change Order and HMQ shall pay for the Change as provided in Section 10.8.

#### 10.8 Funding re: HMQ Change Order

- (a) Subject to Section 10.9(a), HMQ and Project Co shall agree as to a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be incurred in carrying out the HMQ Change Order. If HMQ and Project Co fail to agree as to the terms of the payment schedule, the matter will be determined by the Independent Certifier, if such matter relates to Project Works. If the matter relates to Service Period Works or Project Building and Systems, the matter will be determined in accordance with the Dispute Resolution Procedure;
- (b) Subject to Section 10.9(a), HMQ shall make a payment to Project Co within thirty (30) days of receipt by HMQ of invoices presented to HMQ in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Change specified in the relevant HMQ Change Order has been carried out; and
- (c) If payment is not made in accordance with Section 10.8(b) above, HMQ shall pay interest to Project Co on the amount unpaid (without duplication of other amounts received by Project Co pursuant to this Agreement) commencing thirty-one (31) days after receipt of the relevant invoice by HMQ until paid at the rate set out in Section 51.4 (Interest on Late Payments).

#### 10.9 Project Co Funding

- (a) Subject to the last sentence of this Section 10.9(a), if, on any date prior to the Completion Date, the aggregate amount of increased construction costs, operating

costs and financing costs (excluding, for certainty, the payment of any gross-up amounts for withholding taxes) less the aggregate amount of any reduced construction costs, operating costs and financing costs incurred to implement all Changes required pursuant to all HMQ Change Orders issued to such date (the “**Net Change Costs**”) is less than Cdn \$[REDACTED] (the “**Change Threshold Amount**”), then Project Co shall pay for all such Changes and be reimbursed by HMQ in accordance with Section 10.9(b) or (e), as applicable. At any time that the Change Threshold Amount has not been exceeded (and would not be exceeded if a Change required to be implemented pursuant to an HMQ Change Order is implemented), Project Co shall not be required to obtain funding in accordance with Section 10.7 and HMQ shall not be required to pay for such Change in accordance with Section 10.8. In the event the cost to implement a Change required pursuant to any one HMQ Change Order exceeds Cdn \$[REDACTED], then the provisions of this Section 10.9 shall not apply and Project Co shall be required to use commercially reasonable efforts to obtain funding in accordance with Section 10.7 and the costs of any such Changes shall be made otherwise in accordance with the provisions of this Article 10.

- (b) If, on any date prior to the Completion Date, the Net Change Costs incurred to implement all Changes to such date (other than Changes which are not subject to the provisions of this Section 10.9) is greater than or equal to Cdn \$[REDACTED], then HMQ shall make payment to Project Co of the Net Change Costs within thirty (30) days of receipt of an invoice from Project Co therefore.
- (c) If, on any date prior to the Completion Date, HMQ makes payment to Project Co in accordance with Section 10.9(b), the provisions contained in Section 10.9(a) shall again apply until the earlier of Completion or the Net Change Costs are at least equal to the Change Threshold Amount.
- (d) The Independent Certifier shall maintain records of all Changes and Net Change Costs and the Net Change Costs shall be as determined by the Independent Certifier, absent manifest error. If the Net Change Costs is a negative amount, Project Co shall reimburse HMQ such amount within thirty (30) days of the Completion Date. If payment is not made in accordance with the immediately preceding sentence, without reducing the obligations of Project Co to pay any amount when due, Project Co shall pay interest to HMQ in the amount unpaid (without duplication of other amounts received by HMQ pursuant to this Agreement) commencing on the thirty-first (31<sup>st</sup>) day after the Completion Date until paid at the rate set out in Section 51.4 (Interest on Late Payment).
- (e) After the Completion Date, HMQ shall make a payment to Project Co of the Net Change Costs within thirty (30) days of the Completion Date. For purposes of this repayment, “Net Change Costs” shall include the financing costs (which shall exclude, for certainty, the payment of any gross-up amounts for withholding taxes) on the funding provided by or on behalf of Project Co hereunder, such financing costs to commence as costs to implement a Change are incurred.



- (f) If payment is not made in accordance with Section 10.9(e) above, without reducing the obligation of HMQ to pay any amount when due, HMQ shall pay interest to Project Co in the amount unpaid (without duplication of other amounts received by Project Co pursuant to this Agreement) commencing on the thirty-first (31<sup>st</sup>) day after the Completion Date until paid at the rate set out in Section 51.4 (Interest on Late Payments).
- (g) For greater certainty, the provisions of this Section 10.9 shall apply only to Changes required in respect of the Project Works prior to the Completion Date.

#### 10.10 Project Co Changes

- (a) If Project Co wishes to propose a Change it shall serve on HMQ a notice of such Change (a “**Project Co Notice of Change**”).
- (b) Any Project Co Notice of Change shall:
  - (i) set out the proposed Change (including any proposed program for implementation) in sufficient detail to enable HMQ to evaluate it in full;
  - (ii) specify Project Co’s reasons for proposing the Change;
  - (iii) request HMQ to consult with Project Co with a view to deciding whether to agree to the Change and if so the consequential changes HMQ requires as a result;
  - (iv) indicate any reasonably foreseeable implications of the Change;
  - (v) indicate whether an adjustment to the Monthly Service Payments is proposed (and if so give a detailed cost estimate including fair labour and material costs and contractor mark ups of such proposed adjustment); and
  - (vi) indicate if there are any dates by which a decision by HMQ is critical.
- (c) HMQ shall evaluate Project Co’s proposed Change in accordance with the Review Procedure and in good faith taking into account all relevant issues, including whether:
  - (i) a change in the Monthly Service Payments will occur;
  - (ii) the Change affects the quality of the Project Facilities and/or the Project Works or the Service Period Works or the likelihood of successful delivery of the Project Facilities and/or the Project Works or the Service Period Works;
  - (iii) the change will interfere with the relationship of HMQ with third parties;
  - (iv) the financial strength of Project Co is sufficient to perform the changed Project Works, the Service Period Works or changes to the Project Building and Systems, as the case may be;

- (v) the residual value of the Project Assets is reduced; or
  - (vi) the Change materially affects the risks or costs to which HMQ is exposed.
- (d) If HMQ accepts the Project Co Notice of Change (with or without modification), HMQ shall issue an HMQ Change Order, and the relevant Change shall be implemented within the period specified in the proposed program for implementation delivered by Project Co pursuant to Section 10.10(b). Within this period the parties shall consult and agree to the remaining details as soon as practicable and shall enter into any documents to amend this Agreement or any relevant Project Document which are necessary to give effect to the HMQ Change Order.
- (e) If HMQ rejects the Project Co Notice of Change, it shall not be obliged to give its reasons for such a rejection and such decision shall be final and conclusive and Project Co may not refer the matter to the Dispute Resolution Procedure.
- (f) Unless HMQ's acceptance specifically agrees to an increase in the Monthly Service Payments there shall be no increase in the Monthly Service Payments as a result of an HMQ Change Order issued by HMQ in response to a Project Co Notice of Change.
- (g) If Project Co does not intend to use its own resources to implement any Change set forth in an HMQ Change Order, it shall comply with Good Industry Practice or the HMQ Facilities Management Requirements, as applicable, with the objective that it obtains best value for money (taking into account all relevant circumstances) when procuring any work, services, supplies, materials and equipment required in relation to the Change set forth in an HMQ Change Order.
- (h) HMQ cannot reject a Project Co Notice of Change which (i) is required in order to conform to a Change in Law; or (ii) is required in order to give effect to Section 15.2(b). The costs of introducing a Change resulting from a Relevant Change in Law shall be dealt with in accordance with Article 22 (Change in Law).

#### 10.11 Adjustments to Monthly Service Payments and Lump Sum Payments

- (a) Any adjustment to the Monthly Service Payments as a result of an HMQ Change Order issued in connection with a Change requested by HMQ pursuant to an HMQ Notice of Change shall be such as to ensure that Project Co is, following implementation of the Change, financially no better and no worse off than if it had not been required to implement the Change (which principle, for greater certainty, does not preclude Project Co from realizing a reasonable profit). The adjustment to the Monthly Service Payments as a result of an HMQ Change Order issued in connection with a Change requested by way of an HMQ Notice of Change shall be as agreed between the parties taking account of the principles set out in this Section 10.11. In the case of a Change prior to the Completion Date, to the extent that Project Co has indicated in its Estimate that a payment shall be made by way of lump sum payment, all payments to be made in connection with

work completed by Project Co or its Subcontractors during the period prior to the Completion Date with respect to such Change shall be paid by way of lump sum payment (and not an adjustment to the Monthly Service Payment).

- (b) If (i) the HMQ Change Order issued as a result of a Project Co Notice of Change causes or will cause Project Co's costs or those of a Subcontractor to decrease; or (ii) if any of Project Co's or a Subcontractor's costs are permanently reduced following implementation of a Change in accordance with the provisions of this Article 10 by reason of Technological Change then (after taking into account Capital Expenditure associated with the relevant Change) the benefits of the cost savings shall be shared as to [REDACTED]% to HMQ and [REDACTED]% to Project Co in each case reflected in the adjusted Monthly Service Payments. Project Co shall provide HMQ with a quotation to reduce the Monthly Service Payments and with all such information as HMQ may require for HMQ to ascertain the amount of reduction in costs which Project Co will or should achieve as a result of such Change. As soon as practicable after HMQ receives the quotation, the parties shall discuss and agree to the reduction.
- (c) If a Change involves any reduction in Project Works or Service Period Works and results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate HMQ by way of reduction in the Monthly Service Payments.
- (d) Except as required to give effect to Section 10.11(a) or Compensation Events, and subject to Section 10.11(c), Project Co will not be entitled to claim any losses, costs or damages for overhead or profit with respect to any reduction in Service Period Works.

#### 10.12 Expected Alterations in Service Period Works not a Change

Where any part of this Agreement (including, for greater certainty, the Schedules) contains provision for a particular aspect of the Service Period Works to be altered in a particular manner the implementation of that provision shall not constitute a Change.

#### 10.13 General

Project Co will not be entitled to any payment, compensation or extension of time for a Change except to the extent provided in an HMQ Change Order or otherwise as specifically provided in this Article 10.

#### 10.14 Variations

- (a) Project Co shall not be entitled to any adjustment to any Monthly Service Payment or any other payment as the result of the implementation of Variations.
- (b) HMQ will compensate Project Co for the cost reasonably incurred by Project Co in evaluating whether a Variation requested by HMQ constitutes a Variation or a Change hereunder, only if (i) the Independent Certifier determines that a

Variation proposed by HMQ constitutes a Change (in respect of matters that relate to the Project Works only and during the period in which the Independent Certifier is retained by HMQ and Project Co); or (ii) PMOC or an Adjudicator (if PMOC has not agreed on such matter) determines that the Variation proposed by HMQ constitutes a Change.

## **ARTICLE 11 ENERGY AND UTILITIES: SUPPLY**

### **11.1 Project Co Responsible**

Subject to the terms of this Agreement, Project Co shall be responsible for all costs in relation to consumption and use by Project Co of Energy and Utilities in connection with the carrying out and completion of the Project Works and the Project Facilities up to (but not including) the Completion Date.

### **11.2 Readings at Completion Date**

- (a) On the Completion Date Project Co shall arrange for appropriate meter readings to be taken for all Energy and Utilities utilised prior to that date;
- (b) on or as soon as practicable after the Completion Date Project Co shall arrange for final invoices to be issued by each relevant supplier, based on the meter readings taken pursuant to Section 11.2(a);
- (c) Project Co shall settle the final invoices issued pursuant to Section 11.2(b) by their respective due dates; and
- (d) as soon as practicable, Project Co shall supply to HMQ copies of the meter readings (suitably authenticated), copies of the final invoices and such information as may be reasonably required to substantiate settlement of those invoices.

### **11.3 Further Project Co Responsibility**

In the event that Project Co does not meet part or all of its obligations as set out in Section 11.2:

- (a) it shall be liable for the relevant ongoing costs of the Energy and Utilities until such time as those obligations are satisfied; and
- (b) HMQ may pay such ongoing costs and recover such costs from Project Co by retaining or setting off such amount pursuant to Article 17 (Price, Payment and Set-Off).

### **11.4 Preferred Suppliers**

At least one (1) year prior to the Planned Completion Date, Project Co shall enter into agreements with such suppliers of Energy and Utilities as determined by HMQ, in its sole discretion, provided that any costs or fees payable by Project Co to the supplier of Energy and Utilities in doing so shall be borne by HMQ. Any such agreement entered into by Project Co

shall be for a term of no more than two (2) years (or such longer period as may be agreed by HMQ). Project Co shall not be entitled to renew any such agreements unless HMQ has provided express written consent to the renewal thereof.

#### 11.5 Costs After Completion Date

- (a) Subject to the provisions for Gainshare Adjustments and Painshare Adjustments as more particularly described in **Schedule M (Energy Matters)**, HMQ shall bear the cost of Energy Utilities consumed and used at the Project Facilities following the Completion Date.
- (b) All service invoices relating to Energy Utilities will be billed directly by the applicable Energy Utilities service provider to Project Co and HMQ shall reimburse Project Co for the cost of consumption and use by Project Co of Energy Utilities in accordance with **Schedule M (Energy Matters)** and **Schedule F (Payment Mechanism)**.
- (c) Except as set forth in the next following sentence, all service invoices relating to Utilities will be billed directly by the applicable utilities service provider to HMQ and paid for directly by HMQ and, except as set forth in the next following sentence, Project Co shall not be required to reimburse HMQ for the cost of consumption and use by Project Co of such Utilities. All service invoices relating to (i) telephone, cable and broadband used at the Project Facilities by Project Co or any other Project Co Party; and (ii) Utilities (other than telephone, cable, and broadband used at the Project Facilities by Project Co or any other Project Co Party) used by Project Co or any other Project Co Party at the Project Facilities for purposes other than to perform the Service Period Works, will, in each case, be billed directly by the applicable service provider to Project Co and paid for directly by Project Co, and for certainty, shall not be for the account of HMQ.

#### 11.6 Utilities Management Services

Notwithstanding the payment arrangements described in this Article 11, Project Co shall at all times be responsible for the Utilities Management Services in accordance with the requirements of Section 9 of Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**. In any event, Project Co shall ensure that it is at all times aware of the respective division of responsibilities and (where Project Co is not the responsible party) it shall nevertheless monitor and promptly report any faults or lack of upkeep to the relevant responsible supplier.

### **ARTICLE 12 ENERGY SERVICES**

The provisions of **Schedule M (Energy Matters)** apply to Energy Services and to Gainshare Adjustments and Painshare Adjustments.

**ARTICLE 13**  
**RIGHTS OF ACCESS AND SITE**

13.1 Rights of Access to HMQ

- (a) Rights available to HMQ under this Section 13.1 may be exercised by HMQ acting through a duly authorised person, HMQ's Representative, as appropriate, and references in this Section 13.1 to a 'representative' of HMQ shall be construed accordingly. Any reference to HMQ's or MAG's 'representative' herein does not, for certainty, include the City.
- (b) HMQ, MAG and each of their respective representatives shall have the following rights of access to the Site to:
  - (i) view and inspect the Project Works and the Service Period Works and to view and inspect the construction, operation and maintenance of the Project and to monitor compliance by Project Co with its obligations under this Agreement, in each case, on reasonable prior notice appropriate to the circumstances provided that no notice shall be required for the use of the temporary office maintained for HMQ, the Independent Certifier, MAG and other representatives, as set forth in the Design and Construction Procedure;
  - (ii) subject to obtaining the consent of the relevant subcontractor or Special Projects Subcontractor, which Project Co agrees to use all reasonable efforts to obtain, visit any site or workshop facilities and places where work is being prepared or materials being obtained for purposes of the Project, provided that at all times they shall be accompanied by a representative of Project Co or a subcontractor.
- (c) Project Co shall ensure that the facilities referred to in Section 5.5 of Part II: Design and Construction Procedure, Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** are made available to HMQ, MAG, the Design and Construction Compliance Consultant and each of their respective representatives in order to properly carry out any reviews or inspections which they are entitled to carry out in accordance with the terms of this Agreement and that reasonable assistance is given to HMQ and MAG and each of their respective representatives for the purposes of Sections 13.1(b).
- (d) HMQ shall, and shall ensure that its representatives shall, at all times:
  - (i) act reasonably and in a manner so as to cause the least disruption to the Project Works or the Service Period Works, as applicable; and
  - (ii) comply with any health and safety and/or security requirements of Project Co or the Construction Subcontractor as disclosed in writing to HMQ on the Date of Agreement when exercising rights under this Section 13.1 prior to the Completion Date.

- (e) Without duplication of any amounts otherwise recovered by Project Co or any other Project Co Party pursuant to this Agreement as a consequence of any material damage to the Site, the Project Facilities or any property or persons on the Site as a result of HMQ, MAG or any of their representatives exercising any of their rights under this Section 13.1, if HMQ or MAG or any of their representatives causes material damage to the Site, the Project Facilities or any other property or persons on the Site in exercising any rights under this Section 13.1, then HMQ shall be liable to Project Co for the Direct Losses incurred by Project Co in respect of such damage.

### 13.2 Right to Use Site by Province Persons

Effective from the Completion Date until the Expiry Date, each Province Person and Courthouse Service User shall have a right to use, enter on, have access to, and occupancy of, the Site and the Project Facilities as is required by Province Persons for any purpose, including to perform the Courthouse Activities and to ensure the achievement of Courthouse Functionality. Project Co hereby confirms that such right to enter on, occupy, use and access the Site and the Project Facilities including the unrestricted right to full access to the Site and the Project Facilities to all Province Persons and Courthouse Service Users 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 Courthouse Activities or compromise the court system.

### 13.3 Rights of Access to the City

- (a) Rights available to the City under this Section 13.3 may be exercised by the City acting through a duly authorized person, the City's Representative, as appropriate and may be exercised by the Environmental Consultant.
- (b) The City, the City's Representative and the Environmental Consultant shall, at any time during the Agreement Term, have access to the Site and the Project Facilities (A) on reasonable prior notice appropriate to the circumstances, and (B) in the accompaniment of Project Co or a Subcontractor for the purposes of:
  - (i) completing any necessary remediation of the Site in accordance with the Site Agreement and the plans for remediation more particularly described in various municipal undertaking agreements executed by the City in favour of Her Majesty the Queen in Right of Ontario and/or HMQ (collectively, the "**Undertakings**") and in accordance with any of its obligations to HMQ under the Site indemnity agreement;
  - (ii) conducting inspections and testing of the Site and the Project Facilities (which may include vapour sampling and verification that indoor air quality meets prescribed standards) and visual site inspections to ensure proper functionality of the Environmental Barrier as more particularly described in the Undertakings, as well as to perform all monitoring, maintenance, repair and reporting required by HMQ in respect of the functionality of the Environmental Barrier and as otherwise required to be performed by the City or its consultants pursuant to the Undertakings; and

- (iii) reviewing ongoing construction procedures of Project Co to ensure that the functionality of the Environment Barrier has not been affected.
- (c) The City may at all times during the Agreement Term enter upon any property used by Project Co as training or workshop facilities and places where work is being prepared.

#### 13.4 Right of Access to Third Party Contractors

- (a) Subject to Section 13.12, Project Co shall, and shall ensure that the Project Co Parties shall, give Third Party Contractors access to those parts of the Site and the Project Facilities as is necessary for the purpose of carrying out and completing Third Party Works; provided always that such right of access:
  - (i) shall be on reasonable prior notice appropriate to the circumstances;
  - (ii) shall only be exercised in the accompaniment of Project Co or a Subcontractor; and
  - (iii) does not have a material adverse effect on the ability of Project Co to fully discharge any and all of its obligations under this Agreement.
- (b) HMQ shall ensure that Third Party Contractors shall at all times:
  - (i) act in a manner so as to cause the least disruption to the Service Period Works; and
  - (ii) comply with any health and safety and/or security requirements of Project Co when exercising rights under this Section 13.4
    - (A) as disclosed in writing to HMQ on the Date of Agreement in respect of access by such persons prior to the Completion Date; and
    - (B) as disclosed in writing to HMQ no earlier than sixty (60) days prior to the Completion Date in respect of access by such persons after the Completion Date.

#### 13.5 Right of Access to Durham Regional Police Services

Subject to Section 13.12, Project Co shall, and shall ensure that the Project Co Parties shall give the Durham Regional Police Services and each of its agents, representatives, contractors and/or employees (the “**Durham Police**”) access to those parts of the Site and Project Facilities prior to the Completion Date as is necessary for the purpose of carrying out and completing the design, installation and commissioning of police radio communications systems conduits and other police equipment and such activities shall be contemplated and planned for in accordance with the Design and Construction Procedure, provided always that such right of access (i) shall be on reasonable prior notice to Project Co appropriate to the circumstances; and (ii) shall, where



required by Project Co, only be exercised in the accompaniment of Project Co or a Subcontractor.

13.6 Construction Lien Act (Ontario)

- (a) Project Co shall withhold from each of its Subcontractors the holdbacks required under the *Construction Lien Act* (Ontario) and shall deal with such holdbacks in accordance with the *Construction Lien Act* (Ontario).
- (b) Project Co shall, as a condition of final payment under any Subcontract for which lien rights may be claimed under the *Construction Lien Act* (Ontario), require that a certificate of substantial completion for such Subcontract be issued and that 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.
- (c) Project Co shall follow the requirements of the *Construction Lien Act* (Ontario) and Good Industry Practice for posting and advertising certificates of completion when issued.
- (d) Project Co shall, at all times, comply with the *Construction Lien Act* (Ontario).

13.7 No Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Site, the Project Facilities or any part thereof, other than Permitted Encumbrances.
- (b) In the event that the Site, the Project Facilities or any part thereof or any interest therein becomes subject to any Encumbrance (other than a Permitted Encumbrance) due to an act or omission of Project Co or a Project Co Party, Project Co shall immediately take all steps necessary to remove any such Encumbrance. If such Encumbrance is not removed within ten (10) Business Days of the filing, issuance or registration of such Encumbrance or has not been removed prior to the Termination Date then, without prejudice to any other rights or remedies it may have, HMQ will be at liberty to take whatever steps it deems necessary and appropriate to remove the Encumbrance, including payment of any amount owing or claimed thereunder (or payment of such sums into Court or into a trust arrangement acceptable to HMQ), and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs, all of which shall be payable on demand.

13.8 Costs relating to the Project Facilities

All costs and expenses of any nature and kind relating to the Site, the Project and/or the Project Facilities (including, for certainty, all Taxes and operating costs) which are not expressly declared in this Agreement, to be the responsibility of HMQ, shall be borne by Project Co and, in each Contract Month, Project Co shall be responsible for the payment of all such costs and expenses, all in accordance with the terms of this Agreement.

### 13.9 Realty Taxes Payable

- (a) HMQ shall pay, when due and payable, all Realty Taxes or payments in lieu of Realty Taxes that are assessed in respect of ownership or use of the Site or the Project Facilities. Project Co shall endeavour to deliver all tax bills and assessments that it may receive in respect of the Site, the Project and/or the Project Facilities to HMQ at least sixty (60) days prior to the due date and in any event shall deliver same to HMQ forthwith following receipt by Project Co. Any costs or penalties arising from Project Co's failure to deliver such tax bills or assessments in a timely manner will be the responsibility of Project Co.
- (b) Project Co shall (i) promptly deliver to HMQ notices of any assessments of any Realty Taxes or other assessments received by Project Co; and (ii) upon request of HMQ, furnish such other information in connection with any such Realty Taxes as HMQ reasonably requires from time to time. Project Co shall assist HMQ, at HMQ's sole cost and expense, with any appeals or contestations to a speedy resolution of any improper Realty Tax assessment. If required by HMQ, Project Co shall, at HMQ's sole cost and expense, cooperate with HMQ's contestation or appeals.

### 13.10 Interest in Land and Project Facilities

Project Co agrees that it acquires no estate, right, title or ownership interest in the Site, the Project or any other interest in land pursuant to this Agreement or otherwise, other than (i) a leasehold interest in the Site pursuant to the Sub Lease; and (ii) title to the Project Facilities (excluding, for certainty, the Site). The parties agree that (i) HMQ has and is intended to have the entire reversionary estate, right, title and ownership interest in the Site (excluding, for certainty, but subject to Section 37.5, the Project Facilities); and (ii) Project Co has and is intended to have, subject to Section 37.5, the entire estate, right, title and ownership interest in the Project Facilities (excluding, for certainty, the Site). Notwithstanding anything to the contrary set forth herein, HMQ acknowledges that the Project Facilities (excluding, for certainty, the Site), subject to Section 37.5, vest in Project Co as they are constructed and as soon as any element of the Project Facilities is incorporated into the Site.

### 13.11 Right of Access to Construction Subcontractor and the Service Provider

- (a) Subject to Project Co's obligation to comply with the other terms and conditions set forth in this Agreement and the other Project Documents, HMQ shall, and shall ensure that the Province Persons shall, give (i) the Construction Subcontractor and its employees, officers, agents and subcontractors access to those parts of the Site and Project Facilities as is necessary for the purposes of carrying out and completing the Project Works, and (ii) the Service Provider and its employees, officers, agents and subcontractors access to those parts of the Site and the Project Facilities as is necessary for the purposes of carrying out the Service Period Works, provided always that:
  - (i) such person or persons has complied with all other requirements set forth in the Agreement, including without limitation and to the extent required pursuant to the terms of this Agreement, completing all background

checks set forth in **Schedule H (Background Check Requirements)** of this Agreement; and

- (ii) such person or persons may be denied access to the Site and/or Project Facilities in the circumstances described in Section 8.3 of this Agreement.
- (b) Subject to Project Co's obligation to comply with the other terms and conditions set forth in this Agreement and the other Project Documents, Project Co shall ensure that each Person referenced in Section 13.11(a) above shall at all times act in a manner consistent with the obligations of Project Co under this Agreement.

#### 13.12 Third Party Contractors and Subcontractors

- (a) Subject to Project Co's obligation to comply with the other terms and conditions set forth in this Agreement and the other Project Documents, HMQ shall provide Project Co with prior written notice of union affiliation of any Third Party Contractor or other contractor or subcontractor of HMQ or of the Durham Police which is to be given access to the Site and Project Facilities by Project Co, provided that Project Co agrees that it shall not provide such information to any unions on the Site or the Project Facilities without HMQ's prior written consent.
- (b) If Project Co is required to deny access to the Site and/or Project Facilities to a Third Party Contractor or other contractor or subcontractor of HMQ or of the Durham Police as the result of conflicting union affiliations, HMQ, Project Co and the Construction Subcontractor shall use all commercially reasonable efforts to come to a mutually satisfactory arrangement to permit access to the Site and the Project Facilities to such person.
- (c) HMQ acknowledges and agrees that conflicting union affiliations with subcontractors of the Construction Subcontractor (or the fact that the third party contractors or subcontractors of HMQ or contractors or subcontractors of the Durham Police have no union affiliation) that cannot be resolved shall be reason for Project Co to deny access to the Site and/or the Project Facilities to such persons referenced in Section 13.12(a).

#### 13.13 Commercial Space and Commercial Agreements

- (a) Project Co may sublet, sublicense or grant any other right of occupancy in all or any portion of the Commercial Space or grant any other right in respect of the use or occupancy of the Commercial Space, subject to the prior written consent of HMQ, acting reasonably and without unreasonable delay.
- (b) HMQ may refuse to grant its consent to a sublet, sublicense or grant any other right of occupancy of the Commercial Space on any reasonable basis, including, without limitation, if any of the following are not requirements in the Commercial Occupancy Agreement or other agreement relating to the use or occupancy of the Commercial Space:

- (i) the proposed Commercial Occupant or any of its Affiliates shall not be a Restricted Person or a Person whose standing or activities are inconsistent with MAG's role (in its reasonable opinion) generally in the Province or is inconsistent with the Courthouse Activities, or could reasonably be expected to compromise the reputation of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province and/or the integrity of the Durham Consolidated Courthouse or are inconsistent with the nature of the Province's justice system, so as to affect public confidence in that system and such proposed Commercial Occupant shall have appropriate financial and technical ability to undertake the business contemplated in respect of the Commercial Space;
  - (ii) the only uses permitted under the Commercial Occupancy Agreement or other use or occupancy of the Commercial Space fall within or are complimentary to the intended use of the Project Facilities as a courthouse;
  - (iii) the employees of Commercial Occupant working at the Project Facilities being subject to the provisions of **Schedule H (Background Check Requirements)**, in the same manner as "Designated Project Co Employees", as set forth in **Schedule H (Background Check Requirements)**, any Person employed by Project Co or any contractor or subcontractor of Project Co is subject to, in each case, at the sole cost and expense of Project Co. HMQ and MAG shall be entitled to all the rights and benefits set forth in **Schedule H (Background Check Requirements)** of the Project Agreement in respect of each such employee of the Commercial Occupants, as though such employee of the Commercial Occupant were a Designated Project Co Employee (as defined in **Schedule H (Background Check Requirements)**), or an employee of Project Co or any contractor or subcontractor of Project Co;
  - (iv) HMQ has the right, acting reasonably, to restrict any food, product or service from being sold or provided by a Commercial Occupant in the Commercial Space if the sale of such food, product or service is inconsistent with Government of Ontario policy or is inappropriate in relation to a courthouse, provided that HMQ shall not have the right to deny foods, products or services to be sold or provided if same are required to be delivered by Project Co under the HMQ Facilities Management Requirements; and
  - (v) the Commercial Occupancy Agreement or other document evidencing the right to use of the Commercial Space shall permit consumption of food not purchased from the Commercial Occupant to be consumed in the dining area of the Commercial Space;
- (c) the terms of the Commercial Occupancy Agreement:
- (A) may permit Project Co to grant interior signage rights to Commercial Occupants approved by HMQ, provided that such

signs comply with Applicable Law and the reasonable requirements of HMQ with respect to size, quality and location;

- (B) may require that the term of the Commercial Occupancy Agreement be co-terminous with the term of this Agreement (if required by HMQ, in its sole discretion).
- (d) At the date hereof, Project Co confirms that it is not proposing to enter into any Commercial Occupancy Agreements other than a proposed food service lease and a proposed newstand/tuck shop lease (the “**Proposed Agreements**”), full particulars of which will be provided when Project Co requests the consent of HMQ required in accordance with Section 13.13(a) hereof.
- (e) Project Co and HMQ agree that revenues received by Project Co in respect of the Proposed Agreements shall be shared with HMQ on the basis that HMQ shall be entitled to receive [REDACTED]% of all revenues (net of PST and GST) received by Project Co in excess of Cdn. \$[REDACTED] (indexed) in respect of the Proposed Agreements for each fiscal year of Project Co.
- (f) In addition to the foregoing, HMQ shall be entitled to revenue sharing with respect to all revenues received by Project Co (net of PST and GST) from future commercial occupants of the Commercial Space, as may be agreed to between HMQ and Project Co from time to time.
- (g) In each year of this Agreement, on or before the date which is one hundred and twenty days after the Project Co’s fiscal year end, Project Co shall do an annual reconciliation (the “**Annual Reconciliation**”) of the amounts that it owes to HMQ as a result of the revenue sharing requirements set forth in Sections 13.13(e) and (f) (collectively, the “**Annual Revenue Sharing Amount**”). Project Co shall provide HMQ with the Annual Reconciliation along with the applicable Annual Revenue Sharing Amount, if any, on the earlier of (i) five days after such Annual Reconciliation is provided by Project Co to Landlord; or (ii) one hundred and twenty-five (125) days following each fiscal year end of Project Co. Any Dispute between the parties in respect of the Revenue Sharing Amount for a particular fiscal year of Project Co shall be referred to the Dispute Resolution Procedure.
- (h) If a Commercial Occupant is to be located in an area outside of the Commercial Space or Project Co wishes to expand, re-locate or amend the Commercial Space, then such expansion, re-location or amendment shall be subject to the consent of HMQ.

## **ARTICLE 14 SPECIAL PROJECTS SERVICES AND THIRD PARTY WORKS**

### **14.1 Special Projects Services**

- (a) After Completion, Project Co is required to provide or arrange for the provisions of Special Projects Services upon request by HMQ (the “**Request for Special Project Services**”) in accordance with the provisions of this Section 14.1.

- (b) Each Request for Special Projects Services shall:
  - (i) be provided by HMQ to Project Co at least sixty (60) days prior to the date in which HMQ requires such Special Projects Services to be provided to it;
  - (ii) set out the specific Special Projects Services required to be provided by Project Co; and
  - (iii) set out whether HMQ requires Project Co to obtain competitive quotes (minimum of three) (the “**Service Tender Quotes**”) from any person who may be contracted by Project Co to provide all or part of the Special Projects Services.
- (c) HMQ is not obligated to approve the retention of the services of any person providing a Service Tender Quote.
- (d) Within twenty (20) days after receipt by Project Co of the Request for Special Project Services (or such other time as HMQ and Project Co may agree, acting reasonably) Project Co shall: (i) provide HMQ with an estimate of the actual costs (including materials costs, labour costs and all other overhead and other costs) to provide such services, if all or any part of such services are being provided directly by Project Co (the “**Special Projects Services Estimate**”); (ii) specify whether it will provide such services directly or through a Special Projects Subcontractor; (iii) specify, if applicable, whether the services will be provided in part by it and in part by a Special Projects Subcontractor and identify which services it proposes to provide directly and which services it proposes be provided by a Special Projects Subcontractor; (iv) identify the Special Projects Subcontractor who will be providing the Special Projects Services; (v) if requested by HMQ in its Request for Special Projects Services, provide three Service Tender Quotes; and (vi) inform HMQ of any issues regarding the speedy and timely implementation of the proposed work including impacts on existing building systems capacity and/or disruption to the Project Facilities.
- (e) As soon as practicable after HMQ receives the Special Projects Services Estimate and/or the Service Tender Quotes, as the case may be, the parties shall discuss and agree with respect to the issues set out in the Special Projects Services Estimate and/or the Service Tender Quotes, including:
  - (i) if such services (or any part thereof) are to be provided by a Special Projects Subcontractor, providing evidence that Project Co has used reasonable efforts to obtain competitive quotes and to oblige the applicable Special Projects Subcontractor who has provided a Service Tender Quote to minimize any increase in costs and maximize any reduction in costs; and
  - (ii) if such services (or any part thereof) are to be provided by Project Co directly, providing evidence that Project Co has used reasonable efforts to minimize any increase in costs and maximize any reduction in costs;

(f) In such discussions set forth in Section 14.1(e), Project Co may modify the Special Projects Service Estimate and may present HMQ with modified Service Tender Quotes.

(g) In the event that:

(A) HMQ and Project Co do not agree on the Special Projects Services Estimate or any Service Tender Quote or HMQ does not agree on the Special Projects Subcontractors proposed by Project Co; or

(B) HMQ otherwise determines that it no longer requires Project Co to provide the Special Projects Services or no longer requires the Special Projects Services,

HMQ may withdraw the Request for Special Project Services, provided that HMQ shall pay Project Co reasonable costs incurred by it in connection with the preparation of the Special Projects Service Estimates and obtaining the Service Tender Quotes within thirty (30) days of receipt by HMQ of an invoice therefor from Project Co.

(h) As soon as practicable after:

(A) the Special Projects Services Estimate has been agreed to by HMQ; and/or

(B) the Service Tender Quote has been agreed to by HMQ,

HMQ shall confirm in writing the Special Projects Services Estimate (as modified) and/or the Service Tender Quote (as modified) and Project Co shall provide and/or cause the applicable Special Projects Subcontractor to provide, as applicable, the Special Projects Services in accordance with the Request for Special Projects Services, or as may otherwise be agreed by HMQ and Project Co in writing.

(i) Payment for Special Projects Services shall be made in accordance with Section 17.8 of this Agreement.

(j) All Special Projects Services delivered by Project Co (either directly or through a Special Projects Subcontractor) shall, at a minimum, be provided in accordance with the requirements for the delivery of Special Projects Services specified in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**.

#### 14.2 Third Party Works

At least thirty (30) days prior to the commencement of Third Party Works, HMQ shall give reasonable notice to Project Co of the identity of the relevant Third Party Contractor, the names of personnel of the Third Party Contractor that will be attending the Site, the nature and scope of the Third Party Works and the anticipated start date and end date of the Third Party Works. Any

changes to the Third Party Contractor (and not its personnel and employees) shall be notified in writing to Project Co by HMQ as soon as reasonably practicable and in any event prior to the Third Party Contractor entering the Project Facilities. Any changes to the information notified to Project Co under this Section 14.2 which HMQ is aware after commencement of Third Party Works shall be notified in writing to Project Co by HMQ as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware of same.

## **ARTICLE 15 PERSONNEL ISSUES**

### **15.1 Adherence to Policies**

Project Co shall ensure that all of Project Co Staff (to the extent required pursuant to the Background Check Requirements) comply at all times with the Background Check Requirements.

### **15.2 Change in Background Check Requirements**

- (a) HMQ shall notify Project Co of any proposed change to the Background Check Requirements as soon as practicable (and in any event prior to such change taking effect) and shall consult with Project Co about such changes but the final decision on matters of security or matters affecting the integrity of the justice system shall be HMQ's and MAG's.
- (b) Any change to the Background Check Requirements from those in existence on the date of the Preferred Proponent Agreement, shall, to the extent such change affects materially and adversely the Project Works or the Service Period Works, constitute an HMQ Change Order.

### **15.3 Waiver of Policies**

HMQ may, at its sole option, notify Project Co that Project Co shall not be obliged, for any period of time specified by HMQ in such notice, to comply with any change to any of the Background Check Requirements and that Project Co should continue to comply with Background Check Requirements prior to any change.

### **15.4 Staff Competency**

Project Co shall ensure that all requirements with respect to human resources as set out in the HMQ Facilities Management Requirements are complied with and in particular that:

- (a) there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staffing) engaged in the provision of the Service Period Works with the requisite level of skill and experience;
- (b) all staff receive such training and supervision as is necessary to ensure the proper performance of this Agreement and compliance with all health and safety rules, procedures and requirements, Applicable Laws and the Background Check Requirements; and



- (c) it creates and maintains a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of staff to ensure the proper performance of this Agreement.

#### 15.5 Compliance

Project Co shall, at its sole cost and expense (except as otherwise specifically provided pursuant to **Schedule H (Background Check Requirements)**), comply with the requirements of **Schedule H (Background Check Requirements)** and ensure that all potential staff and persons outlined therein comply with the requirements of such Schedule.

#### 15.6 Notification of Convictions

Project Co shall ensure that HMQ is kept advised at all times of any Designated Project Co Employee employed or engaged by Project Co who, subsequent to his commencement of such employment or engagement receives a Relevant Conviction or is charged with an offence that could lead to a Relevant Conviction of which Project Co becomes aware or whose previous Relevant Convictions become known to Project Co. Project Co shall be responsible for obtaining all Consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to HMQ as contemplated in this Article 15. Project Co shall not permit any Project Co Staff or Designated Project Co Employee who performs any of the Service Period Works who has been charged with an offence that could lead to a Relevant Conviction to access the Project Facilities to perform his work while such charge is outstanding.

#### 15.7 Disciplinary Action

HMQ may notify Project Co if any employee of Project Co, in HMQ's opinion, acting reasonably, misconducts himself or is incompetent or negligent in his duties or whose presence or conduct at the Project Facilities is otherwise considered by HMQ, acting reasonably, to be undesirable or to constitute a threat to the health and/or safety of any of the users of the Project Facilities or would otherwise bring the administration of justice into disrepute or adversely affect the integrity of the justice system. Upon investigation, Project Co shall institute disciplinary proceedings as it deems appropriate, acting reasonably (to the extent such disciplinary actions do not contravene Applicable Laws) and shall advise HMQ in writing of the outcome of any disciplinary action taken in respect of such person.

#### 15.8 Personnel Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, personnel policies and procedures covering all relevant matters relating to the Project Operations. Project Co shall ensure that such policies and procedures are published in written form and that copies of such policies (and any revisions and amendments to them) are forthwith issued to all Project Co Parties and to HMQ.
- (b) If HMQ provides any comments or requests any amendments, modifications or changes to the policies or procedures, Project Co shall consider such comments and amendments, discuss the same with HMQ and shall make such amendments, modifications or changes or incorporate such comments as they may reasonably

agree upon into the personnel policies or procedures to the extent such amendments comply with Applicable Laws.

## **ARTICLE 16 INDEPENDENT CONTRACTORS**

### **16.1 Independent Contractors**

If, during the provision of the Service Period Works, Project Co directly or indirectly engages an independent contractor (being neither an employee of Project Co nor a Subcontractor nor a Special Projects Subcontractor) to perform works or services on the Project Facilities, Project Co shall ensure:

- (a) that the said independent contractor is escorted at appropriate times (taking into account the areas of the Project Facilities in which the independent contractor is working and whether the public are excluded from or restricted from accessing such areas) by a member of Project Co's security staff while visiting the Project Facilities; or
- (b) that HMQ's Representative has been provided with the information required by **Schedule H (Background Check Requirements)** in respect of such independent contractor.

## **ARTICLE 17 PRICE, PAYMENT AND SET-OFF**

### **17.1 Payment of Monthly Service Payments**

Subject to Section 17.2 to 17.8 below, HMQ shall pay to Project Co from the Payment Commencement Date until the earlier of the Expiry Date and the Termination Date the Monthly Service Payment which shall be calculated as provided in **Schedule F (Payment Mechanism)**.

### **17.2 Adjustments**

- (a) If any adjustment required to the Monthly Service Payments pursuant to the terms of this Agreement shall be required to take effect from any day other than the first day of a Contract Year, the Annual Service Payment in respect of the relevant Contract Year shall be adjusted by making such adjustment, pro-rated according to when the adjustment shall be required to take effect. Each Monthly Service Payment required to be paid pursuant to this Article 17 which falls due after the date that such alteration to the Annual Service Payment is required to be made shall be adjusted so that the effect of the alteration in the Annual Service Payment is spread evenly over the remainder of the relevant Contract Year.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to the Payment Mechanism is invalid and unenforceable, and the Province enacts an Applicable Law that is a Change in Law to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits HMQ 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.

### 17.3 Monthly Service Payment Invoice

- (a) On or before the fifth (5<sup>th</sup>) Business Day following the end of each Contract Month, Project Co shall prepare and deliver to HMQ an invoice for the Monthly Service Payment owing by HMQ to Project Co for the Contract Month immediately preceding the month in which the invoice is issued, such invoice to be in a form to be agreed to by the parties from time to time (the “**Monthly Service Payment Invoice**”), setting out:
  - (i) the Monthly Service Payment payable in respect of the Contract Month immediately preceding the month in which the Monthly Service Payment Invoice is issued, together with all deductions and other adjustments made in accordance with **Schedule F (Payment Mechanism)** with respect to such Contract Month;
  - (ii) any other adjustments to reflect overpayments and underpayments, as agreed between the parties or determined in accordance with the Dispute Resolution Procedure;
  - (iii) the net amount owing to Project Co as the result of the preceding adjustments; and
  - (iv) the GST and RST, together with Project Co’s GST registration number.
- (b) HMQ shall not be obligated to make any payment to Project Co unless Project Co has delivered to HMQ (i) the Monthly Service Payment Invoice in respect of the applicable Contract Month in the form required pursuant to Section 17.3(a); and (ii) the Monthly Monitoring Report in respect of the Contract Month for which the Monthly Service Payment Invoice is applicable.

### 17.4 Monthly Monitoring Report

- (a) Each Monthly Service Payment Invoice shall be accompanied by the Monthly Monitoring Report required by Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** in respect of the immediately preceding Contract Month.
- (b) HMQ shall not be obligated to pay an invoice delivered by Project Co after the second Contract Month following the Payment Commencement Date until Project Co has delivered the Monthly Monitoring Report referred to in Section 17.4(a) for the previous Contract Month. In the event that Project Co delivers any Monthly Monitoring Report later than the date set forth in 17.4(a), HMQ’s obligation to pay the invoice issued by Project Co for such Contract Month shall be extended by the number of days by which Project Co was late in delivering the applicable Monthly Monitoring Report to HMQ.

17.5 Dispute Resolution

- (a) If HMQ, acting in good faith disputes any amount referred to in the Monthly Service Payment Invoice HMQ may, no later than seven (7) Business Days after receipt of the relevant Monthly Service Payment Invoice notify Project Co:
  - (i) of the amounts which it does not dispute (the “**Undisputed Amounts**”); and
  - (ii) of the amounts which it does dispute.
- (b) If HMQ gives notice under Section 17.5(a) then the Dispute referred to in such notice shall be dealt with as follows:
  - (i) within five (5) Business Days of the date of receipt of that notice (the “**Date of Receipt**”) Project Co and HMQ shall consult in good faith in an attempt to come to an agreement in relation to the disputed amounts;
  - (ii) if Project Co and HMQ fail to resolve the Dispute within five (5) Business Days of the Date of Receipt then Project Co may refer the matter to the Dispute Resolution Procedure; and
  - (iii) if Project Co and HMQ resolve the Dispute within five (5) Business Days after the Date of Receipt and an adjustment is necessary then Project Co shall, within one (1) Business Day of resolving such Dispute, deliver to HMQ a revised Monthly Service Payment Invoice for the agreed amount.
- (c) If HMQ has not notified Project Co of a Dispute in respect of the Monthly Service Payment Invoice within the time period specified in Section 17.5(a), it shall pay the amounts specified in the Monthly Service Payment Invoice on or before the Payment Date but for the avoidance of doubt HMQ may then refer any disputed matter (if so determined after payment has been made by HMQ) to the Dispute Resolution Procedure (provided that any subsequent reference of a Dispute in respect of the Monthly Service Payment Invoice to the Dispute Resolution Procedure pursuant to this Section 17.5(c) shall not result in any adjustment to any Monthly Service Payment regarding the subject matter of the Dispute until determination of such Dispute in accordance with the Dispute Resolution Procedure).
- (d) Notwithstanding any Dispute of the Monthly Service Payment Invoice by HMQ, HMQ shall pay, on the Payment Date, any Undisputed Amounts.
- (e) If HMQ has notified Project Co of a dispute in respect of the Monthly Service Payment Invoice within the time period specified in Section 17.5(a) and such Dispute is resolved by HMQ and Project Co in accordance with Section 17.5(b)(iii), then HMQ shall pay any amount specified in a revised Monthly Service Payment Invoice delivered by Project Co in accordance with Section 17.5(b)(iii) on the later of (i) the date that is fifteen (15) Business Days of receipt of such revised Monthly Service Payment Invoice, and (ii) the Payment Date.

- (f) If HMQ and Project Co fail to resolve a Dispute in respect of the Monthly Service Payment Invoice within the time specified in Section 17.5(a) and such matter is referred for determination pursuant to the Dispute Resolution Procedure, following resolution of the Dispute pursuant to the Dispute Resolution Procedure, HMQ shall pay the amount determined pursuant to the Dispute Resolution Procedure within fifteen (15) Business Days of receipt by HMQ of the revised Monthly Service Payment Invoice in relation to such disputed amount which has been issued by Project Co after resolution of the Dispute in accordance with the Dispute Resolution Procedure.
- (g) Following resolution of the dispute relating to a Monthly Service Payment, any amount which has been withheld by HMQ that is determined to have been payable shall be paid forthwith by HMQ to Project Co, together with interest on such amount calculated in accordance with Section 51.4 (Interest on Late Payments) on the basis that the due date was the date upon which such amount became payable to Project Co.

17.6 Payment Date

- (a) Other than with respect to the Last Contract Month of the Agreement Term, the Payment Date for a Monthly Service Payment Invoice shall be the first Business Day of the next following Contract Month after the Monthly Service Payment Invoice is issued so that, for the avoidance of doubt, the first Monthly Service Payment shall be payable by the first Business Day of the third Contract Month.
- (b) With respect to the Last Contract Month of the Agreement Term, the Payment Date for the Monthly Service Payment Invoice shall be the thirtieth (30<sup>th</sup>) day after receipt by HMQ of the Monthly Service Payment Invoice in respect of the Last Contract Month. This payment obligation shall survive notwithstanding that such payment is to be made by HMQ after the Expiry Date.

17.7 Payment for Project Co's Services re: New MAG FF&E Purchases after the Completion Date

After the Completion Date, payment for Project Co's services to be carried out in accordance with Section 6.2 shall be based on the value of New MAG FF&E to be purchased and installed into the Project Facilities in accordance with the following percentage amounts:

<u>New MAG FF&amp;E price (indexed)</u>	<u>Percentage Fee</u>
less than or equal to Cdn \$[REDACTED]	[REDACTED]%
greater than Cdn. \$[REDACTED] but less than or equal to Cdn \$[REDACTED]	[REDACTED]%
greater than Cdn \$[REDACTED]	[REDACTED]%

and Project Co shall be paid its fee for such services within thirty (30) days following delivery by the applicable vendor of an invoice with respect to the provision of such services, provided that the New MAG FF&E in which such management fee relates, has been installed, to the reasonable satisfaction of HMQ, in the Project Facilities.

17.8 Payment for Special Projects Services

- (a) HMQ and Project Co, each acting reasonably, shall agree as to a payment schedule in respect of payment for Special Projects Services based upon the agreed Special Projects Services Estimate and/or the agreed Service Tender Quote, as the case may be.
- (b) If Project Co provides Special Projects Services directly to HMQ, HMQ shall make payment to Project Co within thirty (30) days of receipt by HMQ of invoices presented to HMQ in accordance with the agreed payment schedule accompanied by the relevant evidence (where applicable) that the relevant part of the Special Projects Services has been provided to HMQ. If payment is not made in accordance with this Section 17.8(b), without reducing the obligation of HMQ to pay any amount when due, HMQ shall pay interest to Project Co on the amount unpaid (without duplication of other amounts received by Project Co pursuant to this Agreement) commencing on the thirty-first (31<sup>st</sup>) day after receipt of the relevant invoice by HMQ until paid at the rate set out in Section 51.4 (Interest on Late Payments).
- (c) If a Special Projects Subcontractor provides all or any part of the Special Projects Services, HMQ shall (i) make payment to Project Co within thirty (30) days of receipt by HMQ of the invoices presented to HMQ in accordance with the agreed payment schedule; and (ii) pay a fee to Project Co for arranging for the provision of the Special Projects Services by the applicable Special Projects Subcontractor in accordance with the following percentages or flat fee, as applicable:

<b>Special Projects Services</b>	<b>Project or Purchases less than Cdn \$[REDACTED]</b>	<b>Project or Purchases between Cdn \$[REDACTED] and Cdn \$[REDACTED]</b>	<b>Project or Purchases between Cdn \$[REDACTED] and Cdn \$[REDACTED]</b>	<b>Project or Purchases over Cdn \$[REDACTED]</b>
All Special Projects Services	Flat fee Cdn \$[REDACTED] to be charged	Percentage [REDACTED]% to be charged	Percentage [REDACTED]% to be charged	Percentage [REDACTED]% to be charged

- (d) There shall be no increase in the Monthly Service Payments as a result of the provision by Project Co or by any Special Projects Subcontractor of any Special Projects Services and the funding of such services shall be made in accordance with this Section 17.8 unless otherwise agreed to in writing by HMQ and Project Co.

17.9 No Set-Off

The parties agree that their rights of set-off at law or in equity are limited to the right of:

- (a) HMQ to set-off against any amounts otherwise due to Project Co pursuant to the terms of this Agreement, any amounts which are due to HMQ by Project Co pursuant to the terms of this Agreement; and
- (b) Project Co to set-off against any amounts otherwise due to HMQ pursuant to the terms of this Agreement, any amounts which are due to Project Co by HMQ pursuant to the terms of this Agreement,

and further limited with respect to the Senior Debt Termination Amount as described in Section 39.2.

#### 17.10 Payments – General

Unless specified time frames are stipulated for payment of any amounts owing or payable by one party to the other under this Agreement, such amounts shall be due within thirty (30) days of receipt or deemed receipt of an invoice therefor.

### **ARTICLE 18 PRICE INDEXATION**

#### 18.1 Indexation

Specific monetary sums expressed in this Agreement as being ‘indexed’ or ‘index-linked’ (each of which is referred to below as an ‘indexed amount’) are amounts which the parties intend should be adjusted in accordance with this Article 18 so that whenever a provision containing an indexed amount is given effect within or for the purpose of a particular Contract Year it reflects the effects of inflation between the Base Date and the month of February most recently preceding that Contract Year measuring CPI.

#### 18.2 No Minimum / Maximum

For the avoidance of doubt, implementation of indexing may result in an indexed amount being increased or decreased from Contract Year to Contract Year and there shall be no maximum or minimum in relation to indexation adjustments.

#### 18.3 CPI Unavailable or Inappropriate

- (a) If the CPI ceases to be published or is suspended (and in the absence of an official replacement or superseding index) then such alternative index or publication or information shall be adopted which the parties agree produces as nearly as possible the same result or gives the same information.
- (b) If calculation of the adjustment of indexed amounts by reference to the CPI becomes impossible or unconscionable because of a change after the Date of Agreement in the method used to compute and/or the data used to compile the CPI, then any officially-published reconciliation between the two bases of computation and/or compilation shall be binding on the parties. In the absence of any such official reconciliation, the parties shall agree upon an alternative method of calculation with the objective that subsequent payments of indexed amounts

will reflect as closely as possible their intention by reference to the computation and compilation of the CPI prior to such change.

**ARTICLE 19**  
**REPRESENTATIONS, WARRANTIES AND INDEMNITY**

19.1 Reliance

- (a) Except with respect to Section 4.11 and with respect to any matters relating to the environmental conditions of the Site which are addressed in Article 21, Project Co shall be deemed to have:
  - (i) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement;
  - (ii) gathered all information necessary to perform its obligations under this Agreement and other obligations assumed including information as to the nature, location and condition of the Site (including environmental, hydrological, geological and geo-technical conditions); and
  - (iii) gathered information necessary to perform its obligations to design and construct the courthouse building on the Site in accordance with Good Industry Practice so as not to physically impair or interfere with the functionality of the Environmental Barrier.
- (b) Subject to Section 4.11 and Article 21, Project Co shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against HMQ on grounds that any information, whether obtained from HMQ or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of such information.

19.2 Not a Non-Resident

Project Co shall at all times ensure that it is not considered to be a non-resident for purposes of the *Income Tax Act* (Canada).

19.3 Project Co Representations and Warranties

- (a) Project Co represents and warrants to HMQ that as of the date of this Agreement:
  - (i) Project Co is a company incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual reports, 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 Agreement and to perform its obligations hereunder;



- (ii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this 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 Agreement to be done, executed, delivered or performed;
- (iii) no steps or proceedings have been taken or are pending to supersede or amend its constating documents, articles or by-laws in a manner that would impair or limit its ability to perform its obligations under this Agreement;
- (iv) this 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;
- (v) 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 or organizational documents;
  - (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;
- (vi) no Project Co Default has occurred and is continuing;
- (vii) 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 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 materially adverse effect or impairment;

- (viii) Project Co has carefully reviewed the whole of this Agreement, including (a) the HMQ Requirements, (b) all other documents, drawings, reports, data, studies and other information made available to Project Co by or on behalf of HMQ, its agents or related stakeholders (i) in the Electronic Data Site; (ii) through responses by or on behalf of HMQ in respect of RFI's which were marked "Commercial in Confidence"; or (iii) through responses by or on behalf of HMQ in the form of a letter of clarification addressed to Project Co or its advisors in respect of an RFI submitted by or on behalf of Project Co which was of a minor or administrative nature, and, to Project Co's knowledge nothing contained herein or therein inhibits or prevents Project Co from completing the Project Facilities and performing the Project Works and the Service Period Works in accordance with this Agreement in a good and safe manner so that it achieves and satisfies the requirements of this Agreement;
- (ix) Project Co is able to meet its obligations as they generally become due;
- (x) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and
- (xi) the Planned Completion Date is a realistic date and is achievable by Project Co performing the Project Works required to satisfy the Completion Criteria.

#### 19.4 HMQ Representations and Warranties

- (a) HMQ represents and warrants to Project Co that as of the date of this Agreement:
  - (i) OIPC is a corporation continued under the *Ontario Infrastructure Projects Corporation Act*, S.O. 2006, c.o, Schedule I, 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 Agreement and to perform its obligations hereunder;
  - (ii) OIPC is entering into this Agreement as agent of HMQ and has the requisite power, authority and capacity to execute, deliver and perform this Agreement and to bind HMQ, and to do all acts and things and to execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed. OIPC has obtained all necessary approvals to enter into and perform its obligations under this Agreement;
  - (iii) this Project Agreement has been duly authorized, executed, and delivered by OIPC and constitutes a legal, valid, and binding obligation of OIPC acting in its capacity as agent for the Crown, enforceable against OIPC as agent for the Crown in accordance with its terms, subject only to:

- (A) limitations with respect to the enforcement of remedies against sovereign entities and their agencies and possible judicial deference to the acts of sovereign states (and, as to enforcement as against OIPC only, 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 is in the discretion of a court and that a court may stay proceedings or the execution of judgments; and
  - (C) Section 11.3 of the *Financial Administration Act* (Ontario).
- (iv) the execution, delivery, and performance by OIPC of this Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) The *Ontario Infrastructure Projects Corporation Act* (Ontario), 2006, S.O. 2006, c.9, Schedule I, as amended, or any regulations made in respect hereof;
  - (B) The *Executive Council Act* (Ontario) or any regulations made in respect thereof;
  - (C) any Applicable Law; or
  - (D) 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;
- (v) no HMQ Default has occurred and is continuing; and
- (vi) OIPC has the rights to sublease the Site to Project Co in the manner provided for in the Sub Lease.

#### 19.5 Project Co Indemnities to HMQ

- (a) Project Co shall indemnify and save harmless 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 or incurred as a result of, in respect of, or arising out of any one or more of the following:
  - (i) the death or personal injury of any person;
  - (ii) any physical loss of or damage to all or any part of the Site, the Project Assets and/or the Project Facilities, or to other equipment (including FF&E), assets or other property related thereto;

- (iii) a failure by Project Co to achieve Completion by the Planned Completion Date;
- (iv) any physical loss of or damage to property or assets of any third party;
- (v) any other loss or damage of any third party; and
- (vi) any breach of Article 45 (Personal Data) by Project Co or any Project Co Party,

(together referred to herein as the “**Province Claims and Losses**”) in each case, arising, directly or indirectly out of, or which may be a consequence of any breach of this Agreement by Project Co or any Project Co Party or any negligent act or wilful misconduct of Project Co or any Project Co Party, except to the extent:

- (vii) caused or contributed by a breach by HMQ of the Agreement or its obligations under this Agreement; or
- (viii) caused or contributed by, in respect of Sections 19.5(a)(ii) and 19.5(a)(iii), any deliberate or negligent act or omission of any Province Person;
- (ix) caused or contributed by in respect of Sections 19.5(a)(i), 19.5(a)(iv), 19.5(a)(v) and 19.5(a)(vi), any act or omission of any Province Person;
- (x) caused or contributed by a deliberate or negligent act or omission of a Courthouse Service User that results in undue interference with Project Co’s performance of the Service Period Works and Project Co is unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with the recommendation or instruction of HMQ or an appropriate Province Person except to the extent:
  - (A) any such deliberate or negligent act or omission is caused or contributed by Project Co or any Project Co Party;
  - (B) the Courthouse Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party; or
  - (C) Project Co’s non-compliance with the HMQ Facilities Management Requirements has materially contributed to Project Co’s inability to perform the Service Period Works; or
- (xi) such Province Claims and Losses arise as a direct or indirect result of Project Co or a Project Co Party acting on instruction of HMQ or MAG.

- (b) Project Co shall indemnify and save harmless HMQ, MAG and each of their respective directors, officers, employees, agents and representatives, from and against any and all Direct Losses which may be suffered, sustained or incurred as

a result of, in respect of, or arising out of any breach of a representation or warranty of Project Co herein.

- (c) Project Co shall indemnify and save harmless HMQ, MAG and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of the performance by Project Co of this Agreement not in accordance with or in breach of the requirements of any Consents, Applicable Laws or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Consents in accordance with this Agreement, or the failure by Project Co to obtain a current valid Clearance Certificate in accordance with the requirements set forth in Section 2.15 in respect of the Construction Subcontractor, the Service Provider and any other Subcontractor of all or a material portion of the Project Works or Service Period Works or the failure by Project Co to keep accounts in good standing with the Workplace Safety and Insurance Board, except, in each case, to the extent that such Direct Losses are caused or contributed to, by the breach of this Agreement by HMQ or by any act or omission of any Province Persons.
- (d) Project Co shall indemnify HMQ and keep it indemnified against all Direct Losses of any nature arising from or relating to any claim that the Intellectual Property Rights in Project Co Materials (including all licensed software) infringes the Intellectual Property Rights of any third party, except where the infringement arises directly or indirectly from a negligent act or the wilful misconduct of any Province Person.
- (e) An indemnity by Project Co under any provision of this Agreement shall be without limitation to any indemnity by Project Co under any other provision of this Agreement.
- (f) Without prejudice to HMQ's rights under Article 31 (Project Co Defaults) and any other rights under this Agreement, if HMQ exercises its step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify HMQ for all obligations of Project Co assumed by HMQ under the Construction Subcontract or the Operating Subcontract, as the case may be, and for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights.

#### 19.6 HMQ's Indemnities to Project Co

- (a) HMQ 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 or incurred as a result of, in respect of, or arising out of any one or more of the following:
  - (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, breach of this Agreement by HMQ or any negligent act or wilful misconduct of HMQ or any Province Person,

except to the extent caused, or contributed to, by the breach of this 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, breach of this Agreement by HMQ or any deliberate or negligent act or omission of HMQ or any Province Person, except to the extent caused, or contributed to, by the breach of this 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, breach of this Agreement by HMQ or any negligent act or wilful misconduct of HMQ or any Province Person, except to the extent caused, or contributed to, by the breach of this 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 HMQ any liability for the occurrence of risks against which Project Co is bound to insure under this Agreement to the extent of the proceeds available or should have been available but for a failure by Project Co to properly insure in accordance with the terms hereof.

- (b) HMQ 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 or incurred as a result of, in respect of, or arising out of any breach of a representation or warranty of HMQ herein.
- (c) HMQ shall indemnify Project Co and keep it indemnified against all Direct Losses of any nature arising from or relating to any claim that the Intellectual Property Rights in HMQ Materials infringes the Intellectual Property Rights of any third party, except where the infringement arises directly or indirectly from a negligent act or the wilful misconduct by Project Co or any Project Co Party.
- (d) Any indemnity by HMQ under any provision of this Agreement shall be without limitation to any indemnity by HMQ under any other provision of this Agreement.

#### 19.7 Indirect Losses

- (a) Notwithstanding any other provision in this Agreement, without prejudice to HMQ's rights under Article 17 (Price, Payment and Set-Off) and under **Schedule F (Payment Mechanism)**, or the parties' rights in respect of payments provided for herein, the indemnities under this Agreement shall not apply and there shall be no right to claim, directly or indirectly, damages for breach of this Agreement or

any Project Document, 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**”).

#### 19.8 Conduct of Claims

- (a) This Section 19.8 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 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 has suffered or is likely to suffer any Direct Losses or receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to be indemnified under this Article 19 or Sections 21.3 and 21.6 of this Agreement, and in respect of which the Beneficiary intends to make a claim for indemnification, the Beneficiary shall notify the Indemnifier as soon as reasonably practicable and in any event within ten (10) Business Days of becoming aware of same. Such notice shall specify in reasonable detail the nature of the matter and, so far as known, the amount which may be claimed.
- (c) Subject to Sections 19.8(e) and 19.8(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 the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary.

- (d) Following notification of any matter pursuant to Sections 19.8(a):
- (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) subject to Sections 19.8(d)(iv) to 19.8(d)(vii), the Indemnifier may elect to be responsible for dealing with such matter, including having the conduct of any proceedings and incidental negotiations;
  - (iv) the Indemnifier may not pay, admit liability, compromise or settle any claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (v) provided that the Indemnifier shall notify the Beneficiary upon becoming aware of such a requirement, the Indemnifier shall take any action required under the terms of any relevant policy of insurance by any insurer of the risk underlying such matter, to dispute such matter or enforce rights against any third party;
  - (vi) the Indemnifier shall use all commercially reasonable efforts to ensure prompt settlement of any relevant claim under any policy of insurance;
  - (vii) any assessment as to whether or not any condition of, delay in or withholding of consent for the purposes of this Section 19.8(d) is reasonable, shall have regard to matters of public policy affecting the Province Persons, as well as commercial considerations and all other relevant circumstances; and
  - (viii) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under a release given by the person bringing the claim to which this Section 19.8 applies.
- (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 Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 19.8(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within ten (10) Business Days of the notice from the Beneficiary under Section 19.8(a) 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 19.8(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 19.8(c) applies. For greater certainty, Project Co acknowledges and agrees that where HMQ or MAG is the Beneficiary, HMQ or MAG may retain or take over such conduct in any matter involving judicial confidentiality 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 19.8(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 19.8 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 Agreement.

#### 19.9 Mitigation – Indemnity Claims

For greater certainty, Section 51.15 applies to any indemnity given under this 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.

#### 19.10 Maximum Liability

- (a) The maximum liability of each party in respect of a single claim (or series of claims arising as a result of any single event or series of interrelated events) under

Sections 19.5 and 19.6 shall not exceed \$[REDACTED] (indexed). The maximum aggregate liability of each party in respect of all claims under Sections 19.5 and 19.6 shall not exceed \$[REDACTED] (indexed). Each of these limits shall be index linked and shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with **Schedule I (Insurance)**. The maximum liability set out herein shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (b) For greater certainty, a failure by Project Co to achieve Completion by the Planned Completion Date shall be deemed to result in a single claim under this Article 19.
- (c) Nothing in this Section 19.10 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the parties under any other provision of this Agreement other than Sections 19.5 and 19.6.

#### 19.11 No Liability in Tort, etc.

Subject to the indemnities provided herein, HMQ and the Province Persons shall not be liable in tort, strict liability or otherwise to Project Co, and neither Project Co nor any Project Co Party shall be liable in tort, strict liability or otherwise to HMQ or any Province Person in respect of any negligent act or omission of any such person relating to or in connection with this Agreement and no such person shall bring such a claim.

#### 19.12 Sole Remedy

- (a) Subject to:
  - (i) any other rights of HMQ expressly provided for in this Agreement; and
  - (ii) HMQ's right to claim, on or after termination of this 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 Agreement by Project Co except to the extent that the same has already been recovered by HMQ pursuant to this Agreement or has been taken into account to reduce any compensation payable by HMQ pursuant to Article 39 and **Schedule G (Calculation of Termination Payments)**,

the sole remedy of HMQ in respect of a failure to provide the Service Period Works shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 19.12(a) shall prevent or restrict the right of HMQ 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 Agreement, neither party shall be entitled to receive compensation or make a claim under this 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 Agreement, or otherwise.

### 19.13 Environmental Matters

Notwithstanding any other provision in this Article 19 or any other provision in this Agreement, the respective indemnities of Project Co and HMQ contained in this Article 19 or any other provision of this Agreement (other than Article 21 (Environment/Site)) shall not apply to any Direct Losses in respect of (i) Contamination and/or Hazardous Substance; and/or (ii) compliance with Environmental Laws.

## **ARTICLE 20 INSURANCE**

### 20.1 Insurance Requirements

Project Co shall procure and maintain the insurance requirements described on **Schedule I (Insurance)**.

### 20.2 Insured Exposure

Neither party shall be entitled to any payment under the terms of this Agreement to the extent that such party recovers any amount under any insurance policy (or would recover if it complied with its obligations to insure under this Agreement or the terms of any insurance policies required under this Agreement) which amount for greater certainty shall not include the amount of any excess or deductibles.

## **ARTICLE 21 ENVIRONMENT/SITE**

### 21.1 Environmental Compliance

During the Agreement Term Project Co shall comply with and shall ensure that the Project Facilities are compliant with Environmental Law as in force from time to time throughout the Agreement Term. Except as set forth in Section 21.8, Project Co shall not be responsible for any matter related to or arising in any way from or as a result of the Remedial Action Plan, the Environmental Barrier or the operation and maintenance of related works that are part of the *in situ* groundwater monitoring system placed on and around the Site.

### 21.2 Notice of Site Contamination

- (a) Upon the discovery of any Pre-Existing Site Contamination or New Site Contamination, Project Co shall immediately, and in any event within two (2) days of becoming aware of same, inform the HMQ Representative and shall comply with all Applicable Laws (including Environmental Laws) in respect thereof at HMQ's cost. Forthwith following notice of discovery of such New Site Contamination and/or Pre-Existing Site Contamination, HMQ shall promptly carry out at HMQ's cost (and in any event at no cost to Project Co) any Remedial Action required to remedy any breach of Environmental Law.

- (b) In the event that HMQ wishes Project Co to perform actions required to be performed by HMQ pursuant to Section 21.2(a), then HMQ shall issue an instruction to Project Co specifying the action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ's cost.
- (c) For greater certainty, Project Co shall not be responsible for, and shall not have any liability for, any Pre-Existing Site Contamination or New Site Contamination or any matters arising therefrom except as expressly set out in this Article 21.
- (d) Notwithstanding Section 21.4 of this Agreement, in the event of any Project Co Caused Contamination, Project Co shall immediately, and in any event within two (2) days of becoming aware of same, inform the HMQ Representative of such Project Co Caused Contamination. Project Co shall promptly carry out any Remedial Action in respect of the Project Co Caused Contamination to the satisfaction of HMQ.

### 21.3 Project Co Indemnity in Favour of HMQ

Project Co shall indemnify and hold Province Persons harmless from and against any Province Person's Direct Losses as a result of claims brought against any Province Person which arose as a result of (i) failure by Project Co to comply with Environmental Law or a failure by Project Co to design and construct the building on the Site so as not to impair or interfere with the functionality of the Environmental Barrier; or (ii) any Project Co Caused Contamination, other than any claims, demands, causes of action, liabilities, losses, costs and expenses arising from or related to (i) any negligence or wilful misconduct of any Province Person; or (ii) a claim that is manifestly frivolous or vexatious.

### 21.4 Notice

Project Co shall notify HMQ of any breach of Environmental Law by Project Co or any Project Co Party of which Project Co is aware or any third party claim alleging the same immediately, and in any event within two (2) days of becoming aware of same and shall, except to the extent any breach of Environmental Laws is caused by Contamination and/or Hazardous Substances for which HMQ has indemnified Project Co pursuant to the terms of this Agreement (in which case Sections 21.2(a) and 21.6 shall apply), promptly carry out at Project Co's cost (and in any event at no cost to HMQ) any Remedial Action required in order to remedy any breach of Environmental Law. For greater certainty pursuant to this Section 21.4, Project Co shall be exclusively responsible for, and shall be liable for all Project Co Caused Contamination.

### 21.5 Golder Reliance Letter

As a condition to Financial Close, HMQ shall cause Golder Associates Ltd. to deliver to Project Co a letter permitting each of Project Co, BNY Trust Company of Canada, in its capacity as indenture trustee under the Senior Financing Agreements, ABN AMRO Bank, N.V., Canada Branch, in its capacity as lender and issuing bank under the Senior Financing Agreements, Johnson Controls L.P. and PCL Constructors Canada Inc. to rely on the Golder Reports.

## 21.6 HMQ Indemnity in Favour of Project Co

- (a) HMQ agrees to defend, indemnify and hold Project Co, its employees, shareholders, partners, directors, officers and representatives (collectively, the “**Project Co Indemnified Parties**” and individually, a “**Project Co Indemnified Party**”) harmless from and against, and shall pay to the Project Co Indemnified Parties:
- (i) all Direct Losses arising with respect to any Contamination other than Project Co Caused Contamination and other than any claims, demands, causes of action, liability, losses, costs and expenses arising from or related to (i) the negligence or wilful misconduct of any of the Project Co Indemnified Parties; or (ii) a claim that is manifestly frivolous or vexatious; and
  - (ii) the amount of any Direct Losses related to any activity carried on or undertaken on the Site, whether prior to, during or after the Agreement Term and whether by a Province Person or the City in connection with the use, handling, treatment, processing, generation, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances other than any claims, demands, causes of action, liabilities, losses, costs and expenses arising from or related to (i) the negligence or wilful misconduct of any of the Project Co Indemnified Parties; or (ii) a claim that is manifestly frivolous or vexatious.
- (b) Provided that Project Co has (i) complied with the HMQ Design Requirements; (ii) constructed the courthouse building on the Site in accordance with Good Industry Practice; and (iii) has not designed and constructed the building on the Site so as to impair or interfere with the functionality of the Environmental Barrier (as determined in accordance with Section 21.8), HMQ shall indemnify the Project Co Indemnified Parties for all Direct Losses related to migration of Hazardous Substances to or from the Site, other than claims, demands, causes of action, liabilities, losses, costs and expenses arising from or related to (a) the negligence or wilful misconduct of any of the Project Co Indemnified Parties; or (b) a claim that is manifestly frivolous or vexatious.

## 21.7 Mitigation

Provided that Project Co has complied with all of its obligations under this Agreement to design and construct the courthouse on the Site so as to not physically impair or interfere with the functionality of the Environmental Barrier, the obligations of HMQ under this Article 21 with respect to Hazardous Substances in, on, under or migrating from the Site shall not be reduced in any way by any due diligence completed by Project Co with respect to the Site and/or any knowledge of Project Co of the existence of Hazardous Substances in, on, under or migrating from the Site on the Date of Agreement.

21.8 Environmental Barrier

- (a) Throughout all phases of design of the Project, Project Co shall ensure that the design of the courthouse building on the Site is co-ordinated with the City such that the design of the courthouse building does not physically impair or interfere with the functionality of the environmental barrier to be installed by or on behalf of the City to prevent migration of Hazardous Substances in, on, under or from the Site (the “**Environmental Barrier**”).
- (b) Throughout the construction stage of the Project, Project Co shall ensure that construction of the Project Facilities by Project Co does not physically impair or interfere with the functionality of the Environmental Barrier.
- (c) HMQ shall cause the City to appoint and enter into a contract with an Environmental Consultant on behalf of the City for the following provision of services:
  - (i) to review, report and make recommendations to Project Co during the design and construction document stages of the Project in respect of the design of the courthouse building on the Site to require that the design of the courthouse building will not physically impair or interfere with the functionality of the Environmental Barrier, provided that such review shall not relieve Project Co of its obligation and responsibility to construct the courthouse building on the Site in accordance with Good Industry Practice;
  - (ii) upon completion of the design of the courthouse building on the Site to the satisfaction of the Environmental Consultant, the Environmental Consultant will issue a report to Project Co and HMQ confirming that the design of the courthouse building on the Site does not physically impair or interfere with the functionality of the Environmental Barrier;
  - (iii) to review, report and make recommendations to Project Co during the construction stage of the Project, in respect of the construction of the courthouse building on the Site, to ensure that the construction procedures implemented by Project Co will not physically impair or interfere with the functionality of the Environmental Barrier, provided that such review shall not relieve Project Co of its obligation and responsibility to construct the courthouse building on the Site in accordance with Good Industry Practice;
  - (iv) upon completion of construction of the courthouse building on the Site to the satisfaction of the Environmental Consultant, the Environmental Consultant will issue a report to Project Co and HMQ confirming that there has been no physical impairment or interference with the functionality of the Environmental Barrier; and
  - (v) to certify, on the Completion Date, that the Environmental Barrier is fully functional and that the Hazardous Substance levels in, on or under the Site

continue to meet the full depth generic soil, groundwater and sediment standards for use under Part XV.1 of the *Environmental Protection Act* (Ontario), as specified in the Record of Site Condition.

- (d) Project Co shall allow access to the Site to the Environmental Consultant during the construction period and following the Completion Date at all times to conduct Site reviews, Site inspections and perform monitoring of the Environmental Barrier and to otherwise perform its obligations pursuant to the Undertakings. Project Co shall comply with the reports and/or recommendations of the Environmental Consultant in respect of the ongoing construction and post-Completion procedures with regard to the design, construction and maintenance of the courthouse building at the Site and its effects on the Environmental Barrier and in respect of the other matters set forth in this Section 21.8, provided that, if such compliance constitutes a Change, Article 10 (Change in Project Works and Service Period Works) shall apply in respect thereof.
- (e) As a condition to Financial Close, HMQ shall cause the Environmental Consultant to deliver to Project Co and the Senior Lenders a copy of the Record of Site Condition in respect of the Site filed with The Ministry of the Environment.
- (f) All costs and expenses of the Environmental Consultant shall be borne by Project Co. Project Co shall be reimbursed by HMQ within thirty (30) days of receipt of the invoices from the Environmental Consultant.
- (g) With respect to Project Co's obligations under Section 21.8(b) above, HMQ and Project Co agree to follow the following protocol:
  - (i) as part of the design review process contemplated under this Agreement, the Environmental Consultant shall confirm, at the date of completion of the design of the courthouse building at the Site, that the design of the Project is not expected to physically impair or interfere with the functionality of the Environmental Barrier;
  - (ii) Project Co and the Construction Subcontractor shall utilize Good Industry Practice in the construction of the Project Facilities so as to ensure that the courthouse building located on the Site does not physically impair or interfere with the functionality of the Environmental Barrier; and
  - (iii) Upon request, Project Co shall deliver to the Environmental Consultant all designs, working drawings, shop drawings, specifications, site inspection reports and other documentation required for the Environmental Consultant to fulfill its obligations under Section 21.8(c); and
  - (iv) Project Co shall deliver to HMQ and the Environmental Consultant, at least ninety (90) days prior to the Planned Completion Date, as-built drawings with respect to the portion of the Project Facilities existing below grade.

- (h) Project Co acknowledges and agrees that notwithstanding any review, reporting, recommendations or certifications made by the Environmental Consultant as set forth in this Article 21, Project Co shall continue to have, at all times, the responsibility to construct the courthouse building on the Site in accordance with Good Industry Practice and otherwise in accordance with the terms of this Agreement.

Provided that: (i) the foregoing protocol is completed, (ii) the Environmental Consultant has issued the reports, recommendations and certificates referenced in Section 21.8, (iii) Project Co has constructed the courthouse building located on the Site in accordance with the requirements set forth in this Agreement and in accordance with Good Industry Practice, and (iv) no Project Co Party has acted negligently or engaged in any wilful misconduct in respect thereof, Project Co and the Construction Subcontractor shall have no responsibility for the Environmental Barrier or the functionality of the Environmental Barrier arising from the design and/or construction of the Project Facilities.

## **ARTICLE 22 CHANGE IN LAW**

### 22.1 Performance after Change in Law

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

### 22.2 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 Change 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 Change is required to enable Project Co to comply with 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 the Dispute Resolution Procedure; and
  - (iii) HMQ shall, within 10 Business Days of agreement or determination that a Change is required, issue an HMQ Notice of Change and the relevant provisions of Article 10 shall apply except that:
    - (A) Project Co may only object to any such HMQ Notice of Change on the grounds that the implementation of the Change would not enable it to comply with the Works Change in Law;



- (B) Project Co shall be responsible for obtaining all Development Approvals and Consents required in respect of the Change;
- (C) HMQ shall not be entitled to withdraw any such HMQ Notice of Change unless the parties otherwise agree;
- (D) Project Co shall proceed to implement the Change 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 Agreement in respect of any Works Change in Law or associated Change other than as established pursuant to Article 10.

### 22.3 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 had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 22.3.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either party may give notice to the other of the need for a Change 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 Change 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 the Dispute Resolution Procedure; and
  - (iii) HMQ shall, within 10 Business Days of agreement or determination that a Change is required, issue an HMQ Notice of Change and the relevant provisions of Article 10 shall apply except that:
    - (A) Project Co may only object to any such HMQ Notice of Change on the grounds that the implementation of the Change would not enable it to comply with the Relevant Change in Law;
    - (B) Project Co shall be responsible for obtaining all Development Approvals and Consents required in respect of the Change;

- (C) HMQ shall not be entitled to withdraw any such HMQ Notice of Change unless the parties otherwise agree;
  - (D) Project Co shall proceed to implement the Change 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 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 22.3, and any calculation of compensation shall take into consideration, *inter alia*:
    - (I) any failure by a party to comply with Section 22.3(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 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 Article 26 or otherwise in this Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 22.3, and Article 26 shall be construed accordingly.

- (d) In relation to a Relevant Change in Law (other than a Relevant Works 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 22.3(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] in that Contract Year, neither HMQ nor Project Co shall be entitled to any payment or compensation pursuant to this Section 22.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Article 26 or otherwise in this Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.
  
- (e) In relation to a Relevant Works Change in Law that results in a net increase or decrease in costs incurred by Project Co in the delivery of the Project Operations, taking into consideration, *inter alia*, Section 22.3(b)(iii)(E), if the cost impact of such Relevant Works Change in Law in a given Contract Year (in aggregate with all other such Relevant Works Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[REDACTED] in that Contract Year, neither HMQ nor Project Co shall be entitled to any payment or compensation pursuant to this Section 22.3 or otherwise in respect of the cost impact of that Relevant Works Change in Law in that Contract Year, or, except as provided in Article 26 or otherwise in this Project Agreement, any other relief in respect of such Relevant Works Change in Law in that Contract Year.

## **ARTICLE 23 STATUTORY OBLIGATIONS**

### **23.1 Compliance with Statutory Obligations**

Subject to Article 21 (Environment/Site), Article 22 (Change in Law) and the remaining provisions of this Article 23, Project Co shall at its expense comply with and give all notices required by or under any Applicable Law (including, without limitation, any enactment, regulations or by-laws), which may be required in relation to the Project Works, the provision and/or the carrying out of any Service Period Works or otherwise affecting Project Co and/or the Project Facilities (the “**Project Co Statutory Obligations**”).

### **23.2 Notice to HMQ**

Project Co shall as soon as reasonably possible notify HMQ of any divergence between Project Co Statutory Obligations and the terms of this Agreement. Where the said divergence necessitates a variation of the terms of the Agreement in the reasonable opinion of HMQ, Project Co and HMQ shall endeavour to agree such variation of the terms of the Agreement in accordance with Section 51.10 (General Provisions). Where Project Co is obliged to effect immediate compliance with a Project Co Statutory Obligation it shall do so and shall inform HMQ to this effect as soon as possible and such compliance shall be without prejudice to any subsequent variation of the terms of the Agreement agreed or determined pursuant to this Section 23.2.

### 23.3 Not Permit Breach by HMQ

Project Co will not knowingly do or permit or omit to do or permit anything which would or is reasonably likely to cause HMQ to be in breach of its statutory obligations from time to time in force nor do anything to obstruct, fetter or impede HMQ in the discharge of such statutory obligations.

## **ARTICLE 24 RELIEF EVENTS**

### 24.1 Consequences of a Relief Event

- (a) Subject to Section 24.2 and to a party's right to terminate this Agreement in respect of a Relief Event that becomes a Force Majeure Event, no right of termination shall arise under the Agreement by reason of any failure by HMQ or Project Co to perform any of its obligations under this Agreement to the extent that such failure to perform is caused by the occurrence of a Relief Event, it being acknowledged and agreed by Project Co and HMQ that all other rights and obligations of the parties under this Agreement remain unaffected by the occurrence of a Relief Event.
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 25.1(a)(viii):
  - (i) Project Co shall only be relieved of its obligations under this Agreement, to the extent, if any, provided for in Article 25; and
  - (ii) HMQ shall pay to Project Co, on the Completion Date, an amount equal to the Debt Service Amount, together with interest thereon at the rate payable on the principal amount of debt funded under the Senior Financing Agreements, which, but for the Delay Event, would have been paid by HMQ to Project Co.
- (c) If a Relief Event occurs prior to the Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 24.1(b)(ii) and Article 39 (Payments on Compensation).
- (d) During a Relief Event which occurs on or after the Completion Date, the provisions of **Schedule F (Payment Mechanism)** will continue to be in full force and effect, provided that, during such period, (i) the Monthly Service Payment shall never be less than the Debt Service Amount; and (ii) no Service Failure Points shall accrue in respect of any failure by Project Co to perform or any poor performance of any affected Service Period Works to the extent such failure relates solely and directly to a particular Relief Event provided, however for certainty, Deductions will continue to be applied as though Service Failure Points were being awarded.

- (e) Subject to Article 39 (Payments on Compensation), Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Article 24.

#### 24.2 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 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 24.2, such failure shall be taken into account in determining such party's entitlement to relief pursuant to Article 24.
- (c) The party claiming relief shall give written notice to the other party within five (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 five (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 24.2(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 24.2(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.

#### 24.3 Insured Exposure

The compensation payable to Project Co pursuant to this Article 24 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 Agreement in respect of insurance or the terms of any policy of insurance required under this 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.

**ARTICLE 25  
DELAY EVENTS**

25.1 Definition

- (a) For the purposes of this Agreement, “Delay Event” means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Completion by the Planned Completion Date:
- (i) the implementation of a Change to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the HMQ Change Order;
  - (ii) any of the following:
    - (A) any breach by HMQ of any of HMQ’s obligations under this Agreement (including any delay in HMQ giving access to the Site to Project Co or any Project Co Party in accordance with the terms of this Agreement and the Sub Lease), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party; or
    - (B) any delay by HMQ in carrying out of its obligations to review Schematic Design Submissions, Design Development Submissions and Construction Documents Submissions in accordance with the Project Schedule and in accordance with the Review Procedure set forth in **Schedule N (Review Procedure)**;
  - (iii) a requirement pursuant to Sections 21.2(a) or 21.2(b) for HMQ or Project Co to perform any alteration, addition, demolition, extension or variation in the Project Works or to suspend or delay performance of the Project Works, upon the discovery of Pre-Existing Site Contamination or New Site Contamination on or under the Site, which alteration, addition, demolition or extension, variation in the Project Works or suspension or delay in the performance of the Project Works, would not otherwise be required under this Agreement;
  - (iv) the discovery of any item referred to in Section 4.11(d) on the Site prior to the Completion Date or a requirement pursuant to Sections 4.11(a), 4.11(f) or 4.11(g) for Project Co to perform any alteration, addition, demolition or extension or variation in the Project Works upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition or extension or variation in the Project Works or suspension or delay in the performance of the Project Works, would not otherwise be required under this Agreement;
  - (v) material and adverse interference with the Project Works resulting from (a) entry upon the Site or work undertaken in accordance with Sections

13.3 (other than entry upon the Site or work undertaken by the Environmental Consultant or any of its agents, subcontractors or employees which is contemplated by the terms of this Agreement), 13.4 or 13.5; or (b) any defect or deficiency (if discovered during the Agreement Term) in respect of any work undertaken by any person referenced in Section 13.3 (other than work undertaken by the Environmental Consultant or any of its agents, subcontractors or employees which is contemplated by the terms of this Agreement), 13.4, or 13.5;

- (vi) the migration of a Hazardous Substance onto the Site as a result of a failure of the Environmental Barrier, provided that such event shall only constitute a Delay Event if Project Co has complied with its obligations in respect of the Environmental Barrier set forth in Section 21.8;
- (vii) Force Majeure Event;
- (viii) a Relief Event;
- (ix) a Relevant Change in Law;
- (x) a requirement pursuant to Section 43.17 for Project Co to proceed in accordance with the direction of HMQ during the pendency of a dispute, which dispute is subsequently determined by the Adjudicator to constitute a Delay Event;
- (xi) an opening up of the Construction Work pursuant to Section 5.1 of Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** where such Construction Work is not subsequently found to be defective or not in compliance with the requirements of this Agreement (including, for certainty, the HMQ Requirements and the Project Co Proposal Extracts), unless such opening up of the Construction Work was reasonable in light of other defects or non-compliance previously discovered by HMQ in respect of the same or a similar component of the Construction Work or subset of the Construction Work; or
- (xii) an unreasonable delay by the City in carrying out its obligations to coordinate and co-operate with Project Co in respect of the event described in Section 21.8(a) (Environment/Site).

## 25.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the HMQ Representative and the Independent Certifier within five (5) Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within ten (10) Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:

- (i) a statement of which Delay Event the claim is based upon;
  - (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 Planned Completion Date; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within three (3) Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.
- (c) The HMQ Representative shall, after receipt of written details under Section 25.2(a), or of further particulars under Section 25.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Article 25, the HMQ Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Planned Completion Date as soon as reasonably practicable and in any event within ten (10) Business Days of the later of:
- (i) the date of receipt by the HMQ Representative of Project Co's notice given in accordance with Section 25.2(a) and the date of receipt of any further particulars (if such are required under Section 25.2(c)), whichever is later; and
  - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 25.2(b) and the date of receipt of any further particulars (if such are required under Section 25.2(c)), whichever is later.
- (e) For the avoidance of doubt, there shall be no extension to the Agreement Term as a result of any delay caused by a Delay Event.
- (f) If:



- (i) the HMQ Representative declines to fix a revised Planned Completion Date;
- (ii) Project Co considers that a different Planned 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 determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either party and referred for resolution in accordance with the Dispute Resolution Procedure.

### 25.3 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 Agreement;
  - (ii) to continue to perform its obligations under this Agreement to the extent possible notwithstanding the Delay Event; and
  - (iii) to resume performance of its obligations under this 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 25.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Article 25.

## **ARTICLE 26 COMPENSATION EVENTS**

### 26.1 Definition

For the purposes of this Agreement, "Compensation Event" means any event referred to in Section 25.1(a)(ii), 25.1(a)(iii), 25.1(a)(iv), 25.1(a)(v), 25.1(a)(x) (if in respect of Section 25.1(a)(x) only, it is determined by the Adjudicator to constitute a Compensation Event) or 25.1(a)(xi), 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.

### 26.2 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 Article 26. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation except as otherwise provided in, as applicable:

- (i) Article 10 (Change in Project Works or Service Period Works), in the case of a Delay Event referred to in Section 25.1(a)(i);
- (ii) Article 38 (Force Majeure), in the case of a Delay Event referred to in Section 25.1(a)(vii); or
- (iii) Article 24 (Relief Events) in the case of a Delay Event referred to in Section 25.1(a)(viii); and
- (iv) Article 22 (Change in Law) in the case of a Delay Event referred to in Section 25.1(a)(ix).

for greater certainty, provided that Project Co has not otherwise recovered an amount from HMQ in respect of the same claim under any other provision of this Agreement or otherwise, nothing herein shall affect the ability of Project Co to make claim pursuant to the indemnity provided to it in Section 21.6 (Environment/Site).

- (b) Subject to Section 26.3 and 26.4, if it is agreed, or determined in accordance with the 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 HMQ to Project Co. Project Co shall promptly provide the HMQ Representative with any information the HMQ Representative may require in order to determine the amount of such compensation.
- (c) If HMQ is required to compensate Project Co pursuant to this Section 26.2, then HMQ 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, HMQ 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 Section 10.11 (Change in Project Works or Service Period Works) shall apply, as though it resulted from an HMQ Change Order.

### 26.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall required all Project Co Parties to, take and continue to take commercially reasonable steps so as to minimize the amount of compensation due in accordance with this Article 26 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 26.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Article 26.

#### 26.4 Insured Exposure

The compensation payable to Project Co pursuant to this Article 26 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 Agreement in respect of insurance or the terms of any policy of insurance required under this 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

### **ARTICLE 27 EXCUSING CAUSES**

#### 27.1 Definition

- (a) For the purposes of this Agreement, “Excusing Cause” means any of the following events or circumstances if it occurs after the Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Service Period Works:
- (i) the implementation of a Change to the extent Project Co has identified any impact on the Service Period Works in its Estimate and such impact has been documented in the HMQ Change Order;
  - (ii) any breach by HMQ of any of any of HMQ’s obligations under this Agreement (including any delay in HMQ giving access to the Site to Project Co or any Project Co Party in accordance with the terms of this Agreement and the Sub Lease), 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 HMQ 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 Service Period Works, 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 the HMQ Facilities Management Requirements or was otherwise provided for in this 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 Agreement;
- (iv) the implementation of any action taken by HMQ, or any suspension of Project Co's obligation to deliver all or any part of the Service Period Works, or the compliance by Project Co with instructions given by HMQ, in each case in the circumstances referred to in Article 40 (HMQ Step-In Rights);
- (v) any official or unofficial strike, lockout, work to rule or other labour-related action involving any Province Person;
- (vi) the event described in Section 6.5(b) (FF&E and Project Assets) or the events described in Sections 8.3(a) (Emergency Events and Security Matters);
- (vii) material and adverse interference with the Service Period Works resulting from (a) entry upon the Site or work undertaken by the City (other than entry upon the Site or work undertaken by the Environmental Consultant or any of its agents, subcontractors or employees which is contemplated by the terms of this Agreement) or a Third Party Contractor after the Completion Date in accordance with Sections 13.3 and 13.4, respectively; or (b) any defect or deficiency (discovered during the Agreement Term) in respect of any work undertaken by the City (other than work undertaken by the Environmental Consultant or any of its agents, subcontractors or employees which is contemplated by the terms of this Agreement) or a Third Party Contractor;
- (viii) provided that the Environmental Consultant has issued the certificate set forth in Section 21.8(c)(v), the migration of Hazardous Substances onto the Site as a result of a failure of the Environmental Barrier;
- (ix) the performance of a Variation to the extent that Project Co has identified any impact on the Service Period Works in writing to HMQ and such impact has been confirmed in writing to Project Co;
- (x) a Relevant Change in Law;
- (xi) the discovery of any New Site Contamination or Pre-Existing Site Contamination on or under the Site; or
- (xii) 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.

27.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within ten (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 27.3 and 27.4):
  - (i) any failure by Project Co to perform, and any poor performance of, any affected Service Period Works shall not constitute a breach of this Agreement by Project Co, no Service Failure Points shall accrue in respect of such failure and Project Co shall accordingly be relieved of its obligations to perform such Service Period Works 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 Service Period Works in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Service Period Works 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 Unavailability Events or Failure Events resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Agreement as if there had been no such interference with the Service Period Works, 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 Agreement if this Agreement is terminated as provided herein;
  - (iv) this Section 27.2 shall not limit HMQ's entitlement to reimbursement pursuant to Section 40.4(b);
  - (v) HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Sections 27.1(a)(ii), 27.1(a)(iii), 27.1(a)(vii) and 27.1(a)(xi), 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 Article 10 (Change in Project Works and Service Period Works); and
  - (vi) the Monthly Service Payments payable by HMQ 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 Article 10 (Change in Project Works and Service Period Works).

### 27.3 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 Agreement;
  - (ii) to continue to perform its obligations under this Agreement to the extent possible notwithstanding the Excusing Cause; and
  - (iii) resume performance of its obligations under this 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 27.3, such failure shall be taken into account in determining Project Co's entitlement to any relief pursuant to this Article 27.

### 27.4 Insured Exposure

The compensation payable to Project Co pursuant to this Article 27 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 Agreement in respect of insurance or the terms of any policy of insurance required under this 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.

## **ARTICLE 28 HANDBACK**

The provisions of Part II: Handback Requirements of **Schedule E (Service Period Works)** shall apply to the Handback of the Project Assets, the FM Components and the Replacement FM Components to HMQ on the expiry of this Agreement. Save and except as expressly provided in Part II: Handback Requirements of **Schedule E (Service Period Works)** and Article 37 (Termination or Expiry of the Agreement Term) of this Agreement, no payment or other compensation shall be made by HMQ upon the expiry of this Agreement in respect of the Handback of the Project Assets.

## **ARTICLE 29 OVERSIGHT COMMITTEE**

### 29.1 Establishment of Project Management Oversight Committee

- (a) HMQ and Project Co shall within thirty (30) days after the Date of Agreement establish a committee (the "**Project Management Oversight Committee**" or "**PMOC**") consisting of:

- (i) four (4) senior representatives of HMQ appointed by HMQ from time to time, one of whom shall be HMQ's Representative and, prior to Completion, one of whom shall be the Design and Construction Compliance Consultant; and
  - (ii) the following four (4) representatives appointed by Project Co from time to time:
    - (A) two (2) representatives of Project Co including Project Co's Representative; and
    - (B) two (2) other representative as appointed by Project Co from time to time who may be, if during the period between the Date of Agreement to the Completion Date, the senior architect or, at any time after the Completion Date, a representative of the Service Provider, and Project Co shall take into account any reasonable requests from HMQ for particular representatives to attend.
- (b) HMQ's Representative shall be the chairperson of the PMOC.

## 29.2 Communications to Representatives

At the time that a party appoints or changes the appointment of HMQ's Representative or Project Co's 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.

## 29.3 Representatives

- (a) HMQ's Representative
  - (i) HMQ's Representative shall exercise the functions and powers identified in this Agreement as functions or powers to be performed by HMQ's Representative and such other functions and powers of HMQ under this Agreement as HMQ may notify to Project Co from time to time.
  - (ii) HMQ's Representative shall be entitled at any time, by written notice to Project Co, to authorize any other person to exercise the functions and powers of HMQ's Representative, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of HMQ's Representative and all references to "HMQ's Representative" in this Agreement shall be taken as references to such person in relation to matters within the scope of such person's authority.
  - (iii) HMQ may from time to time by written notice to Project Co change HMQ's Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in the written notice.

- (iv) During any period when no HMQ Representative has been appointed, or when HMQ's Representative is unable through illness, incapacity or any other reason whatsoever to perform HMQ's Representative's functions under this Agreement, HMQ shall perform or may by written notice to Project Co promptly appoint an alternative HMQ's Representative to perform the functions which would otherwise be performed by HMQ's Representative. Upon receipt of such written notice, Project Co and Project Co's Representative shall be entitled to treat any act of such alternative HMQ's Representative which is authorized by this Agreement as being authorized by HMQ, and Project Co and Project Co's Representative shall not be required to determine whether authority has in fact been given.
  - (v) HMQ's Representative shall not, except as otherwise provided in this Agreement, be entitled to modify or waive any provision of this Agreement or to authorize a Change.
  - (vi) Except as previously notified in writing before such act by HMQ to Project Co, Project Co and Project Co's Representative shall be entitled to treat any act of HMQ's Representative which is authorized by this Agreement as being authorized by HMQ, and Project Co and Project Co's Representative shall not be required to determine whether authority has in fact been given.
- (b) Project Co's Representative
- (i) Project Co's Representative shall have full authority to act on behalf of Project Co for all purposes of this Agreement.
  - (ii) Project Co may from time to time by written notice to HMQ change Project Co's Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in the written notice.
- (c) During any period when Project Co's Representative is unable through illness, incapacity or any other reason whatsoever to perform Project Co's Representative's functions under this Agreement, Project Co shall perform or may by written notice to HMQ promptly appoint an alternative Project Co's Representative to perform the functions which would otherwise be performed by Project Co's Representative. Upon receipt of such written notice, HMQ and HMQ's Representative shall be entitled to treat any act of such alternative Project Co's Representative which is authorized by this Agreement as being authorized by Project Co, and HMQ and HMQ's Representative shall not be required to determine whether authority has in fact been given.
- (d) Project Co's Representative shall not, except as otherwise provided in this Agreement, be entitled to modify or waive any provision of this Agreement.



- (e) Except as previously notified in writing before such act by Project Co to HMQ, HMQ and HMQ's Representative shall be entitled to treat any act of Project Co's Representative which is authorized by this Agreement as being authorized by Project Co and HMQ and HMQ's Representative shall not be required to determine whether authority has in fact been given.

29.4 Function and Role

- (a) The PMOC shall use reasonable efforts to assist the parties to promote cooperative and effective communication.
- (b) The PMOC shall be responsible for receiving and reviewing matters concerning the Project Works only if such matter is referred to the PMOC by the Independent Certifier pursuant to Section 4.10(d) or otherwise pursuant to the terms of this Agreement, or if, pursuant to the Design and Construction Procedure, such matter is to be reviewed by PMOC (which shall include, without limitation, review of the Project Schedule). Other than as specifically set forth in this Agreement, the PMOC shall not be responsible for receiving and reviewing any other matters concerning the Project Works. Notwithstanding the foregoing, PMOC shall be responsible for communications matters as described in **Schedule P (Pre-Completion Communications Plan)**.
- (c) The PMOC shall be responsible for receiving and reviewing matters concerning the Service Period Works, including:
  - (i) detailed works schedule;
  - (ii) issues arising from reports or documents provided by Project Co;
  - (iii) issues of public concern;
  - (iv) quality assurance and safety issues;
  - (v) community and media relations issues, including approval of media releases and public communications information and relating to such other matters set forth in the Services Period Communications Plan;
  - (vi) any special matters referred to the PMOC by HMQ or Project Co;
  - (vii) any matters referred to the PMOC by HMQ or Project Co pursuant to **Schedule N (Review Procedure)**;
  - (viii) receiving and considering reports;
  - (ix) receiving and considering other issues pertaining to the Service Period Works; and
  - (x) engaging in public communications in respect of the Project Facilities in accordance with the Service Period Communications Plan.

- (d) The role of the PMOC is to make recommendations to the parties, which they may accept or reject at their sole discretion. Neither the PMOC, nor its members acting in that capacity, shall have any authority to vary or amend this Agreement or to make any decision which is binding on the parties.
- (e) Neither party shall rely on any act or omission of the PMOC, or any member of the PMOC acting in that capacity, so as to give rise to any waiver or estoppel in respect of any right, benefit or obligation of either party.

#### 29.5 Term of PMOC

Unless otherwise agreed, the PMOC shall continue throughout the Agreement Term.

#### 29.6 Procedures and Practices of PMOC

- (a) The members of the PMOC may:
  - (i) adopt such procedures and practices for the conduct of the activities of the PMOC as they consider appropriate from time to time;
  - (ii) invite to any meeting of the PMOC such other persons as the members of the PMOC may agree; and
  - (iii) receive and review reports from any person or organization agreed to by the members of the PMOC.
- (b) Once established, the PMOC shall meet at least once each month, or such other frequency as may be required, from the Date of Agreement until the earlier of the Expiry Date and the Termination Date, unless otherwise agreed by the members of the PMOC or the parties, and from time to time as necessary.
- (c) Any member of the PMOC may convene a meeting of the PMOC at any time. Up until the Completion Date, meetings of the PMOC shall be convened on not less than three (3) days notice to all members of the PMOC identifying the agenda items to be discussed at the meeting, provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances. After the Completion Date, meetings shall be convened on not less than seven (7) days notice to all members of the PMOC identifying the agenda items to be discussed at the meeting, provided that in emergencies 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 PMOC the PMOC shall meet at the Site or at the Project Facilities.
- (e) Minutes of all recommendations and meetings of the PMOC, including those made by telephone or other form of communications, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes promptly to the parties, within seven (7) days of the making of the recommendation or the holding of the meeting. A complete set of all minutes of

the meetings of the PMOC shall be made available by Project Co for inspection by HMQ during regular business hours, upon reasonable request of HMQ and shall be posted on the e Room during design development and construction.

- (f) A representative of a party on the PMOC may appoint and remove an alternate representative by written notice delivered to the other party at any time. If a representative of a party is unavailable for a meeting of the PMOC:
  - (i) an alternate representative of such party may attend such meeting and shall have the same rights and powers as the representative; and
  - (ii) the other party's representatives may rely on the alternate representative's statement that the representative is unavailable.

### **ARTICLE 30 REFINANCING**

#### **30.1 HMQ Consent**

Project Co shall not carry out any Qualifying Refinancing unless Project Co has obtained the prior written consent of HMQ, which consent, subject to Section 30.2, shall not be unreasonably withheld or delayed and both HMQ and Project Co shall at all times act in good faith with regard to any Refinancing.

#### **30.2 Withholding of Consent**

HMQ 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;
- (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 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 HMQ, whether actual or contingent, present or future, known or unknown.

#### **30.3 Sharing of Gain**

HMQ shall be entitled to receive a fifty percent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing.

#### **30.4 Details of Proposed Refinancing**

Project Co shall promptly provide HMQ 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. HMQ 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. Project Co shall promptly, and in any event, within five (5) Business Days of receiving a written request from HMQ, provide any information in relation to a proposed Refinancing as HMQ may reasonably require. Project Co shall keep HMQ informed as to any changes to the material terms of the Refinancing.

### 30.5 HMQ's Election

Subject to Section 30.6, HMQ 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;
- (b) a reduction in the Monthly Service Payments over the remaining term of the Agreement; or
- (c) a combination of any of the above,

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 HMQ's share of the Refinancing Gain.

### 30.6 Calculation of Refinancing Gain

HMQ and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of HMQ's share of the Refinancing Gain (taking into account how HMQ has elected to receive its share of the Refinancing Gain under Section 30.5 above and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of the calculation of the Refinancing Gain, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

### 30.7 Costs

The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that, within fifteen (15) Business Days of any Qualifying Refinancing, Project Co shall reimburse HMQ for all such reasonable out-of-pocket costs incurred by HMQ.

### 30.8 Lenders' Direct Agreement

Upon the completion of any Refinancing, HMQ and Project Co shall ensure that where there are new lenders they will enter into a direct agreement on terms substantially the same as those in the Lenders' Direct Agreement.

### 30.9 Right to Withdraw

Project Co shall be under no obligation to complete a Refinancing and shall be free at any time to withdraw from any Refinancing process subject to the payment by Project Co to HMQ of all

reasonable or proper costs incurred by HMQ in connection therewith within thirty (30) days of a demand from HMQ.

### 30.10 Exempt Refinancing

After the Date of Agreement, an "Exempt Refinancing" shall include, a restructuring of shareholder equity of Project Co which includes shareholder loans provided that such shareholder loans (i) shall not be considered "Senior Debt" for purposes of this Agreement (including, without limitation, payments of any Debt Service Amount and any compensation on termination made pursuant to **Schedule G (Calculation of Termination Payments)**); (ii) shall be subject to the provisions of this Agreement with respect to Change in Control and Change in Ownership; and (iii) shall be treated as equity for purposes of any payment of compensation on termination pursuant to **Schedule G (Calculation of Termination Payments)** and provided further that the terms and conditions of such Exempt Refinancing are otherwise satisfactory to HMQ, acting reasonably.

## **ARTICLE 31 DEFAULT BY PROJECT CO**

### 31.1 Warning Notice

- (a) HMQ may serve a notice (a "**Warning Notice**") on Project Co specifying that it is a formal warning notice, where
  - (i) in any one (1) month period, Project Co incurs any one or more of the following:
    - (A) 1,000 Service Failure Points with respect to a single Service Category under the HMQ Facilities Management Requirements;
    - (B) 3,000 Service Failure Points with respect to all Service Categories under the HMQ Facilities Management Requirements; or
    - (C) 6,000 Service Failure Points in total in respect of all Service Categories and all Unavailability Events; or
  - (ii) in any rolling three (3) month period, Project Co incurs any one or more of the following:
    - (A) 2,000 Service Failure Points with respect to a single Service Category under the HMQ Facilities Management Requirements;
    - (B) 6,000 Service Failure Points with respect to all Service Categories under the HMQ Facilities Management Requirements; or
    - (C) 12,000 Service Failure Points in total in respect of all Service Categories and all Unavailability Events.
- (b) Upon receipt by Project Co of a Warning Notice, Project Co shall forthwith and in any event within seven (7) Business Days provide HMQ with a report describing

the reason for achieving such threshold of Service Failure Points together with any other relevant information with respect to such Service Failure Points; including any plans for rectification.

- (c) Project Co shall notify HMQ immediately, and in any event within two (2) Business Days, of Project Co incurring the Service Failure Points identified in Sections 31.1(a)(i) and 31.1(a)(ii).

### 31.2 Rectification Plan

- (a) HMQ may serve a monitoring and rectification notice on Project Co (a “**Monitoring and Rectification Notice**”) requiring Project Co to put forward a rectification plan, where:
  - (i) in any rolling three (3) month period, Project Co incurs or receives (in respect of Warning Notices) any one or more of the following:
    - (A) 6,000 Service Failure Points with respect to a single Service Category under the HMQ Facilities Management Requirements;
    - (B) 18,000 Service Failure Points with respect to all Service Categories under the HMQ Facilities Management Requirements;
    - (C) 36,000 Service Failure Points in total in respect of all Service Categories and all Unavailability Events; or
    - (D) 3 Warning Notices, or
  - (ii) in any rolling twelve (12) month period, Project Co incurs or receives (in respect of Warning Notices) any one or more of the following:
    - (A) 18,000 Service Failure Points with respect to a single Service Category under the HMQ Facilities Management Requirements;
    - (B) 54,000 Service Failure Points with respect to all Service Categories under the HMQ Facilities Management Requirements; or
    - (C) 108,000 Service Failure Points in total in respect of all Service Categories and all Unavailability Events; or
    - (D) 9 Warning Notices.
- (b) Project Co shall notify HMQ immediately, and in any event within two (2) Business Days, of Project Co incurring the Service Failure Points identified in Sections 31.2(a)(i) and 31.2(a)(ii).
- (c) Upon receipt by Project Co of a Monitoring and Rectification Notice, Project Co shall:

- (i) increase the monitoring of its performance of the Service Period Works as well as provide a report describing the reason for incurring such number of Service Failure Points and/or Warning Notices, as the case may be, together with any other relevant information with respect to such Service Failure Points and/or Warning Notices.
  - (ii) within five (5) Business Days of receipt of a Monitoring and Rectification Notice, put forward a comprehensive and reasonable plan for the rectification of the deficiency (a “**Rectification Plan**”). Such Rectification Plan shall set out a schedule for diligently remedying the issue or issues that gave rise to the grounds for the Monitoring and Rectification Notice and shall specify in reasonable detail the manner in which such issues are proposed to be remedied. The scheduled completion date for the rectification work under such Rectification Plan shall be the earliest date reasonably possible in the circumstances, provided that the proposed period for effecting rectification shall not exceed twenty (20) Business Days from the date of issuance by HMQ of the Monitoring and Rectification Notice, unless the issues or matters giving rise to such notice are not reasonably capable of being remedied in such twenty (20) Business Day period, in which case the permitted period for rectification shall be such longer period as may be approved by HMQ, acting reasonably.
  - (iii) perform and achieve all elements of the Rectification Plan and schedule described in Section 31.2(c)(ii) hereof in accordance with its terms within the time for the performance of its obligations thereunder.
- (d) If a Monitoring and Rectification Notice has been delivered and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the relevant issues and to mitigate any adverse effects on HMQ or delivery of the Service Period Works, as applicable; or
  - (ii) Project Co fails to put forward a Rectification Plan and schedule pursuant to Section 31.2(c); or
  - (iii) the issues identified in the Monitoring and Rectification Notice are not remedied within twenty (20) Business Days of issuance by HMQ of such Monitoring and Rectification Notice or such longer period as is established pursuant to the Rectification Plan and schedule established pursuant to Section 31.2(c); or
  - (iv) where Project Co puts forward a Rectification Plan and schedule pursuant to Section 31.2(c) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such Rectification Plan and schedule in accordance with its terms within the time for the performance of its obligations,

then HMQ may terminate this Agreement in its entirety by written notice to Project Co on the date so determined by HMQ and stated in such notice of termination.

- (e) Despite any provisions of this Agreement, HMQ may waive or refrain from exercising its rights under this Section 31.2 with respect to any one or more service failures by Project Co in the performance of its obligations under this Agreement, without prejudice to HMQ's rights to take and enforce its rights and remedies under this Section 31.2 with respect to any subsequent service failures by Project Co, whether of the same nature or otherwise.
- (f) Despite any other provisions of this Agreement, a Monitoring and Rectification Notice may not be issued to Project Co unless a Warning Notice has been issued within the twelve (12) month period immediately preceding the date on which HMQ proposes to send a Monitoring and Rectification Notice.

### 31.3 Notification of Occurrence

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

### 31.4 Remedy Provisions

- (a) In the case of a Project Co Default referred to in items (q)(ii), (q)(iii), (q)(iv) of the definition of Project Co Default (where the Project Co Default referred to in item (q)(iv) of the definition of Project Co Default is analogous to a Project Co Default referred to in item (q)(ii) or (q)(iii) of the definition of Project Co Default) items (c), (e), (i), (l), (m) and (s) of the definition of Project Co Default (where the Project Co Default referred to in item (m) of the definition of Project Co Default is capable of being remedied), (g), (k), (n) or (p) of the definition of Project Co Default, HMQ shall, prior to being entitled to terminate this 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 (5) Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Default is proposed to be remedied, which latest date shall, in any event, be within thirty (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 HMQ, 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 31.4(a)(i) that has a date for the Project Co Default to be remedied that is beyond thirty (30) days from the notice of default, HMQ shall have five (5) Business Days from receipt of the same within which to notify Project Co that HMQ does not accept such longer period in the plan and schedule and that the thirty (30) day limit will apply, failing which HMQ shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Default, of which a notice of default was given under Section 31.4(a), occurs and:
  - (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Default and to mitigate any adverse effects on HMQ and the performance of the Courthouse Activities; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 31.4(a)(i); or
  - (iii) such Project Co Default is not remedied within thirty (30) days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 31.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 31.4(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 HMQ may terminate this Agreement in its entirety by written notice with immediate effect.
- (d) Notwithstanding that HMQ may give the notice referred to in Section 31.4(a), and without prejudice to the other rights of HMQ in this Section 31.4, at any time during which a Project Co Default is continuing, HMQ may, at Project Co's risk and expense, take such steps as HMQ considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of the obligations of Project Co under this Agreement, or to remedy such Project Co Default.
- (e) Upon the occurrence of a Project Co Default that Project Co has remedied pursuant to this Section 31.4, such occurrence of a Project Co Default shall thereafter cease to be a Project Co Default and HMQ shall not be entitled to terminate this Agreement for that occurrence of a Project Co Default.

### 31.5 Notice of Termination

- (a) On the occurrence of a Project Co Default or at any time after HMQ becomes aware of a Project Co Default, and, if the occurrence of a Project Co Default is disputed by Project Co in good faith, then following confirmation in accordance with the Dispute Resolution Procedure that a Project Co Default has occurred,

HMQ may, subject to Section 31.4, give a Termination Notice to Project Co, and this Agreement will terminate on the date so determined by HMQ and stated in such notice.

- (b) Despite any other provisions of this Agreement, a Termination Notice may not be issued to Project Co as a result of a Project Co Default set forth in item (a) of the definition of Project Co Default unless a Monitoring and Rectification Notice has been issued within the twelve (12) month period immediately preceding the date on which HMQ proposes to send the Termination Notice.

### 31.6 Calculation of Termination Payments

If HMQ terminates this Agreement as the result of the operation of Section 31.2 or otherwise by serving a Termination Notice on Project Co pursuant to this Article 31, HMQ shall pay the amount calculated in accordance with **Schedule G (Calculation of Termination Payments)** and Article 39 (Payments of Compensation).

### 31.7 Replacement of a Non-Performing Subcontractor

- (a) HMQ may, in its sole discretion require Project Co to terminate any Subcontract and ensure that a replacement Subcontractor is appointed pursuant to Article 9 (Subcontracting) to provide all those parts of the Service Period Works which were performed by the previous Subcontractor within sixty (60) days, as an alternative to termination of this Agreement as a result of the occurrence of any of the events described in Section 31.2(d); provided that this Section 31.7 shall not give rise to a partial termination of the obligations of Project Co to provide the Service Period Works and provided that the rights of HMQ under this Section 31.7 shall not arise until HMQ has the right to issue a Termination Notice under Section 31.5.
- (b) If HMQ exercises its rights under this Section 31.7 Project Co shall, within five (5) Business Days, put forward proposals for the interim management or provision of the relevant Service Period Works until such time as an alternative Subcontractor can be engaged by Project Co. If Project Co fails to do so, or if its proposals are not reasonably likely to give adequate provision of the relevant Service Period Works and HMQ and Project Co cannot agree within a further three (3) Business Days to a plan for the interim management or provision of the relevant Service Period Works, then, without prejudice to any other rights of HMQ in this Section 31.7, HMQ itself may perform, or engage others (including a third party) to perform, such Service Period Works (and Project Co shall bear all costs and expenses incurred by HMQ in relation to the exercise of this right). Any Dispute in respect of the interim management or provision of the relevant Service Period Works may be referred for resolution in accordance with the Dispute Resolution Procedure.
- (c) If Project Co fails to terminate or secure the termination of, the relevant Subcontract and to secure a replacement Subcontractor in accordance with this Section 31.7, HMQ shall be entitled to exercise its termination rights in accordance with this Agreement.

### 31.8 HMQ's Costs

Project Co shall reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) properly incurred by HMQ in exercising its rights under this Article 31, including any relevant increased administrative expenses. HMQ shall take commercially reasonable steps to mitigate such costs.

### 31.9 No Effect on Set-Off and Payment Mechanism

The exercise or non-exercise by HMQ of its rights under this Article 31 shall be without prejudice to the rights of HMQ under **Schedule F (Payment Mechanism)** and Section 17.9 (Set-Off).

## **ARTICLE 32 DEFAULT BY HMQ**

### 32.1 Termination on HMQ Default

- (a) On the occurrence of an HMQ Default and while the same is continuing or at any time after Project Co becomes aware of an HMQ Default, and if the occurrence of an HMQ Default is disputed by HMQ in good faith, then following confirmation in accordance with the Dispute Resolution Procedure that an HMQ Default has occurred and Project Co wishes to terminate this Agreement, it must serve a Termination Notice on HMQ within sixty (60) days of (i) becoming aware of the HMQ Default; or (ii) confirmation that such HMQ Default has occurred pursuant to the Dispute Resolution Procedure.
- (b) The Termination Notice must specify the type of HMQ Default which has occurred entitling Project Co to terminate.
- (c) The Agreement will terminate on the day falling sixty (60) days after the date HMQ receives the Termination Notice, unless, only in respect of an HMQ Default set forth in item (b) of the definition of "HMQ Default" herein, HMQ rectifies the HMQ Default within sixty (60) days of receipt of the Termination Notice.

### 32.2 Compensation on HMQ Default

On termination of this Agreement under Section 32.1, HMQ shall pay to Project Co the HMQ Default Termination Sum in accordance with Article 39 (Payments of Compensation) and **Schedule G (Calculation of Termination Payments)**.

### 32.3 Project Co's Costs

Without duplication of any other amounts payable by HMQ to Project Co hereunder (including for certainty, payment of interest on late payments), HMQ shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) incurred in the proper exercise of Project Co's rights under this Article 32, including any relevant increased administrative expenses. Project Co will take commercially reasonable steps to mitigate such costs.

**ARTICLE 33**  
**VOLUNTARY TERMINATION BY HMQ**

33.1 Voluntary Termination

If HMQ wishes to terminate the Agreement for any reason whatsoever at any time prior to the Expiry Date it must give notice to Project Co stating:

- (a) that HMQ is terminating the Agreement under this Article 33;
- (b) that the Agreement will terminate on the date falling one-hundred and eighty (180) days after the date of delivery by HMQ to Project Co of such notice; and
- (c) whether HMQ has chosen to exercise its option under Section 37.5.

33.2 Termination Date

The Agreement will terminate on the date falling one-hundred and eighty (180) days after the date of receipt of the notice referred to in Section 33.1 above.

33.3 Payments of Compensation

On termination pursuant to this Article 33, Article 39 (Payments of Compensation) and **Schedule G (Calculation of Termination Payments)** shall apply and HMQ shall pay to Project Co an amount equal to the amount payable on termination under Article 32 (Default by HMQ).

**ARTICLE 34**  
**PROHIBITED ACTS**

34.1 No Prohibited Act

Project Co warrants that in entering into this Agreement it has not committed any Prohibited Act.

34.2 Commission of Prohibited Act

If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then HMQ shall be entitled to act in accordance with this Section 34.2.

- (a) If a Prohibited Act is committed by Project Co or by any employee of Project Co not acting independently of a direction of a director or officer of Project Co, then HMQ may terminate the Agreement by giving a Termination Notice to Project Co and the Agreement will terminate on the day falling thirty (30) days after the date Project Co receives such Termination Notice issued pursuant to Section 34.3.
- (b) 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 HMQ may give a Termination Notice to Project Co and the Agreement will terminate on the day falling thirty (30) days after the date Project Co receives the Termination Notice issued pursuant to Section 34.3, unless within twenty (20) days of receipt of such notice Project Co terminates the employment of that person and (if

necessary) procures, to the reasonable satisfaction of HMQ and in accordance with the terms of this Agreement, the performance of such part of the Project Operations by another person, subject to compliance with Article 15 (Personnel Issues) and the other provisions of this Agreement applicable to persons performing Project Operations.

- (c) If the 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 HMQ may give a Termination Notice to Project Co and the Agreement will terminate on the day falling thirty (30) days after the date Project Co receive the Termination Notice issued pursuant to Section 34.3, unless within twenty (20) days of receipt of such notice Project Co terminates the relevant Project Document and/or Subcontract and/or Special Projects Subcontract and procures, to the reasonable satisfaction of HMQ and in accordance with the terms of this Agreement, the performance of such part of the Project Operations by another person, subject to compliance with Article 15 (Personnel Issues) and the other provisions of this Agreement applicable to persons performing Project Operations.
- (d) 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 HMQ may give a Termination Notice to Project Co and the Agreement will terminate on the day falling thirty (30) days after the date Project Co receive the Termination Notice issued pursuant to Section 34.3, unless within twenty (20) days of receipt of such notice the Subcontractor or Special Projects Subcontractor, as the case may be, terminates that person's employment and (if necessary) procures, to the reasonable satisfaction of HMQ and in accordance with the terms of this Agreement, the performance of such part of the Project Operations by another person, subject to compliance with Article 15 (Personnel Issues) and the other provisions of this Agreement applicable to persons performing Project Operations.
- (e) If the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 34.2(a) to 34.2(d) above, then HMQ may give notice to Project Co of termination and the Agreement will terminate on the day falling thirty (30) days after the date Project Co receives the Termination Notice issued pursuant to Section 34.3 unless within twenty (20) days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and procures, to the reasonable satisfaction of HMQ and in accordance with the terms of this Agreement, the performance of such part of the Project Operations by another person, subject to compliance with Article 15 (Personnel Issues) and the other provisions of this Agreement applicable to persons performing Project Operations.

### 34.3 Notice of Termination

- (a) Any notice of termination under this Article 34 shall specify:
  - (i) the nature of the Prohibited Act;

- (ii) the identity of the party whom HMQ believes has committed the Prohibited Act;
  - (iii) the date on which this Agreement will terminate, in accordance with the applicable provision of this Article 34; and
  - (iv) whether HMQ has chosen to exercise its option under Section 34.6 below.
- (b) Without prejudice to its other rights or remedies under this Article 34, HMQ shall be entitled to recover from Project Co any Direct Losses sustained as a consequence of any breach of this Article 34.

#### 34.4 Notification

Project Co shall notify HMQ of the occurrence and details of any Prohibited Act promptly upon Project Co becoming aware of its occurrence.

#### 34.5 Payments of Compensation

On termination of this Agreement in accordance with this Article 34, HMQ shall pay to Project Co the Prohibited Acts Termination Sum in accordance with Article 39 (Payments of Compensation) and **Schedule G (Calculation of Termination Payments)**.

#### 34.6 Permitted Payments

Nothing contained in this Article 34 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.

#### 34.7 Replacement Project Co Parties

Where Project Co is required to replace any Project Co Party pursuant to this Article 34, the party replacing such Project Co Party shall, subject to compliance with the provisions of this Agreement with respect to Project Co Parties, from the time of the replacement be deemed to be a Project Co Party and the provisions of this Agreement shall be construed accordingly.

### **ARTICLE 35 UNLAWFUL DISCRIMINATION**

#### 35.1 Comply with Applicable Law

- (a) Project Co shall comply with all Applicable Law from time to time in force relating to unlawful discrimination (including on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability) and human rights in relation to its provision of the Project Operations; and
- (b) Project Co shall observe the provisions of Section 35.1(a) and shall cause all Project Co Parties to observe the provisions of Section 35.1(a).

## **ARTICLE 36 TAXES**

### 36.1 Taxes

All amounts due under this Agreement are inclusive of all Taxes other than, to the extent applicable, RST and GST.

### 36.2 Provide Information

Project Co shall provide HMQ with any information reasonably requested by HMQ in relation to the amount of Taxes chargeable in accordance with the Agreement and payable by HMQ to Project Co.

### 36.3 Recovery of Additional Amounts

HMQ shall be entitled to recover from Project Co any additional amount of Taxes for which HMQ becomes liable in consequence of Project Co's failure to fulfil any contractual obligations in the time specified or required by this Agreement should an increase in the rate of Taxes take effect after the expiry of the time so specified or required.

### 36.4 GST

- (a) The Crown is not subject to GST.
- (b) OIPC is currently subject to GST, however OIPC is seeking an exemption from being subject to GST. If OIPC becomes exempt from payment of GST, OIPC will provide Project Co with a certification that all deliverables under this Agreement are required for the use of the Crown in right of Ontario and therefore not subject to GST.
- (c) The supply of all property and services by Project Co to HMQ under this Agreement (including, for certainty, where Project Co purchases or arranges for the purchase of equipment at the direction of HMQ) will be subject to GST, unless OIPC receives an exemption from being subject to GST, as set out in Section 36.4(b) above.
- (d) If there is an assignment of this Agreement in accordance with Section 41.2(a)(iii), GST will be payable in accordance with the assignee's GST exemption status.

### 36.5 Changes in Recoverability of Tax Credits

- (a) HMQ 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 HMQ 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 36.5, the term “**Irrecoverable Tax**” means GST or RST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Service Period 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 GST or RST (as the case may be).
- (c) For the purposes of this Section 36.5, the term “**Recoverable Tax**” means GST or RST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Service Period 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 GST or RST (as the case may be).

## **ARTICLE 37 TERMINATION OR EXPIRY OF AGREEMENT TERM**

### **37.1 Termination**

Notwithstanding any provision of this Agreement, on the earlier of the Expiry Date or the Termination Date, this Article 37 shall apply in respect of any termination upon such dates.

### **37.2 Continued Effect - No Waiver**

Notwithstanding any breach of this Agreement by HMQ or Project Co, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this 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 Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

### **37.3 Ownership of Information**

Subject to the rights of Project Co in the Project Co Materials, all information obtained by Project Co, including the As Built Drawings, the Record 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 pertinent to the Project Operations accumulated over the course of the Agreement Term shall be the property of HMQ and upon termination of this Agreement shall be provided or returned to HMQ, as applicable, in electronic format acceptable to HMQ, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format. Project Co shall, at Handback, provide unlimited access to the computerized facilities management and financing management business systems required by HMQ or its third party designate to continue operations of the Project Facilities. This includes any information regarding the design, equipment and systems in a format that is consistent with the Real Suite ASP Solutions or other formats that HMQ may require for a period of one (1) year.



37.4 Provision in Subcontracts and Special Projects Subcontracts

Project Co shall make provision in all Subcontracts and Special Projects Subcontracts to which it is a party (including requiring the relevant Subcontractors and Special Projects Subcontractors to make such provision and to require other Subcontractors and Special Projects Subcontractors to make such provision) to ensure that HMQ shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Article 37.

37.5 Title/Transfer of Assets to HMQ

- (a) On the Termination Date or on the Expiry Date:
- (i) if termination is prior to Completion, to the extent Project Co has any interest in the Project Assets, upon request by HMQ, Project Co and the Project Co Parties shall transfer to and there shall vest in, HMQ, or as directed by HMQ, free from all Encumbrances (other than Permitted Encumbrances), such part of the Project Works and the Project Facilities as shall have been constructed and such items of Project Assets as shall have been procured or purchased for the purposes of the Project, in each case, for nil consideration other than payment of the Termination Sum calculated in accordance with **Schedule G (Calculation of Termination Payments)**, if applicable, and if HMQ so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 37.5(a)(i)(B)) on or near the Site shall remain available to HMQ for purposes of completing the Project Works; and
    - (B) all construction plant and equipment shall remain available to HMQ for the purposes of completion of the Project Works, subject to payment by HMQ of the Construction Subcontractor's reasonable charges;
  - (ii) without derogating from any of Project Co's other obligations set forth in this Agreement, if termination is after Completion, Project Co and the Project Co Parties shall transfer to and there shall vest in, HMQ, or as directed by HMQ free from all Encumbrances (other than Permitted Encumbrances), the Project Facilities for nil consideration other than payment of the Termination Sum calculated in accordance with **Schedule G (Calculation of Termination Payments)**, if applicable;
  - (iii) insofar as title shall not have already passed to HMQ pursuant to Sections 37.5(a)(i) or 37.5(a)(ii), Project Co and the Project Co Parties shall handover to, and there shall vest in HMQ, free from all Encumbrances (other than Permitted Encumbrances), the Project Assets 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 the facilities and equipment, and to the extent that the Project Assets and/or any such assets or rights are not capable of being transferred by Project Co or a Project Co Party to HMQ, Project Co shall or shall cause the applicable

Project Co Party to, enter into agreement or make other arrangements in order to permit the use of such assets or rights by HMQ 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 and/or the Project Co Parties if this Agreement had not been terminated, in each case, for nil consideration other than payment of the Termination Sum calculated in accordance with **Schedule G (Calculation of Termination Payments)**, if applicable;

- (iv) in the case of the termination of this Agreement on the Expiry Date, the Project Facilities and all elements and components of the Project Facilities shall be in the condition required in accordance with the Handback Requirements;
- (v) if HMQ so elects, Project Co shall ensure (a) that any of the Subcontracts (including the Construction Subcontract and the Operating Subcontract) and any other instrument entered into by such Subcontractor or 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, and (b) that any of the Special Projects Subcontracts and any other instrument entered into by such Special Projects Subcontractor or Project Co for securing the performance by such Special Projects Subcontractor of its obligations in respect of Special Projects Services, shall, in each case, be novated or assigned to HMQ or its nominee, provided that where termination occurs other than as a result of a Project Co Default, the consent of the relevant Subcontractor or Special Projects Subcontractor, as the case may be, shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Subcontractor or the Service Provider shall be made by HMQ pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (vi) in addition to the rights of HMQ set forth in 37.5(a)(i), and without derogating from the rights set forth therein, Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if HMQ so elects, execute such sale) or rent to HMQ, or as HMQ may direct, at a fair value (determined as between a willing vendor and willing purchaser, or as between a willing lessor and a willing lessee with any Disputes as to such fair value being resolved in accordance with the Dispute Resolution Procedure), free from any Encumbrance (other than any Encumbrances derived through HMQ), all or any part of the Project Specific Plant and Equipment owned by Project Co or any Project Co Parties and reasonably required by HMQ in connection with completing the Project Works, the operation of the Project Facilities, the provision of the Service Period Works and/or the provision of Special Project Services;
- (vii) if termination is during the Service Period, upon request by HMQ, all Non-Project Specific Plant and Equipment shall remain available to HMQ for a period of six (6) months after the Termination Date for the purposes

of enabling HMQ (or its designated agents or subcontractors) to continue to perform the activities which would have otherwise been performed by Project Co and/or the Project Co Parties if the Agreement had not been terminated, subject to payment by HMQ of the Service Provider's reasonable charges;

- (viii) Project Co shall deliver to HMQ (to the extent not already delivered to HMQ) one complete set of:
  - (A) the most recent As Built Drawings in the format that HMQ, acting reasonably, considers most appropriate at the time showing all alterations made to the Project Facilities since the Completion Date;
  - (B) the most recent maintenance, operation and training manuals for the Project Facilities; and
  - (C) the Plant Services Information Management System, fully updated;
- (ix) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to HMQ, free of Encumbrances (other than any Encumbrances derived through HMQ), 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 Agreement and included in the Project Facilities; and
- (x) if termination is prior to the Completion Date, to the extent not already required by the foregoing provisions of this Section 37.5, Project Co shall deliver to HMQ (to the extent not already delivered to HMQ) one complete set of all Jointly Developed Materials and Intellectual Property relating to the design, construction and completion of the Project Works and Project Facilities.

#### 37.6 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 Service Period Works pursuant to Sections 3.2 and 3.3 of **Schedule G (Compensation on Termination)** if applicable:
  - (i) cooperate fully with HMQ and any successors providing to HMQ services in the nature of any of the Project Operations or any part of the Project Operations in order to achieve a smooth transfer of the manner in which HMQ obtains services in the nature of the Project Operations and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the users of the Project Facilities, including employees, volunteers and visitors to the Project Facilities and members of the public;

- (ii) as soon as practicable remove from the Site and the Project Facilities all property belonging to Project Co or any Project Co Party that is not acquired by HMQ pursuant to the terms of this Agreement, and, if Project Co has not done so within sixty (60) days after any notice from HMQ requiring it to do so, HMQ 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 HMQ's Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to, any part of the Project Facilities; and
    - (B) without prejudice to HMQ's rights pursuant to Article 44 (Intellectual Property) either (i) any copyright licences for any computer programs or licences to use the same used in connection with the operation of the Project Facilities, or (ii) if any copyright, licenses for computer programs or licenses to use the same in connection with the operation of the Project Facilities are not transferable, to the extent possible and commercially reasonable, such replacement copyright licenses for any computer programs or licenses to use the same substantially the same as the copyright licenses for any computer programs used in connection with the operation of the Project Facilities, and including, in each case, for certainty, computer programs which have been developed or acquired by a Subcontractor or Special Projects Subcontractor for the purposes of provision of any of the Project Operations or Special Project Services, as applicable, at the Project Facilities, provided that in connection with any computer programs which have been developed or acquired by a Subcontractor or Special Projects Subcontractor for its own use and not solely for the purposes of provision of any of the Project Operations or Special Project Services, as applicable, at the Project Facilities, such computer programs shall be licensed to HMQ, on terms acceptable to HMQ, acting reasonably, provided that Project Co satisfies HMQ, acting reasonably, that such computer programs are not used by the Subcontractor or Special Projects Subcontractor solely for purposes of the provisions of Project Operations or Special Project Services, respectively, at the Project Facilities; and
  - (iv) as soon as practicable vacate the Site and the Project Facilities and, without limiting Project Co's obligations under Part II: Handback Requirements of **Schedule B (Service Period Works)**, shall leave the Site and the Project Facilities in a safe, clean and orderly condition.
- (b) If HMQ 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 Service Period Works following the termination of

this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs by HMQ, cooperate with HMQ fully in such competition process, including by:

- (i) providing any information which HMQ may reasonably require to conduct such competition, including all information contained in the Plant Services Information Management System other than Sensitive Information, except information which is commercially sensitive information; and
  - (ii) assisting HMQ by allowing any or all participants in such competition process unrestricted access to the Site and the Project Facilities.
- (c) Project Co covenants and agrees, at all times during the Agreement Term, to use all commercially reasonable efforts to purchase, obtain or otherwise acquire or to cause each Subcontractor and each Special Projects Subcontractor of Project Co, the Construction Subcontractor and the Service Provide to purchase, obtain or otherwise acquire copyright licenses for computer programs or licenses to use same in connection with the Project Facilities (including, for certainty, computer programs which have been developed or acquired by a Subcontractor or a Special Projects Subcontractor for the purposes of provision of any of the Project Operations or Special Projects Services) that are assignable and transferable to third parties, including HMQ or any person designated by HMQ.

### 37.7 Termination upon Aforesaid Transfer

On completion of Project Co's obligations pursuant to this Article 37, this Agreement shall terminate and, except as provided in Section 51.14, all rights and obligations of HMQ and Project Co under this Agreement shall cease and be of no further force and effect.

### 37.8 Without Prejudice

In the event of termination of this Agreement (whether pursuant to a Termination Notice, by effluxion of time or otherwise) and save as otherwise expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any liability of either party to the other that arises prior to the Termination Date to the extent that such liability has not already been set off pursuant to Section 17.9 or 39.2 or taken into account pursuant to **Schedule G (Calculation of Termination Payments)** in determining the relevant termination sum.

### 37.9 Continue to Perform

For the avoidance of doubt and except where the Agreement expressly provides otherwise, the parties shall, during any applicable notice period, continue to perform their respective obligations under this Agreement notwithstanding the giving of a Termination Notice until the termination becomes effective in accordance with this Article 37.

### 37.10 Procedure on Termination

On termination (whether pursuant to a Termination Notice, by effluxion of time or otherwise) of this Agreement, Project Co shall:

- (a) do all necessary acts (including entering into any agreement) to ensure that the Successor Project Co or HMQ, as the case may be, obtains all of Project Co's rights, title and interest in and to the Project Assets, the Project Facilities and the New MAG FF&E with effect on and from termination;
- (b) use all reasonable efforts to obtain all Consents in relation to the performance of its obligations contained in this 37.10;
- (c) co-operate fully with the Successor Project Co (if any) and HMQ in relation to the legal and operational handover of responsibilities between Project Co and either the Successor Project Co in relation to the Successor Service or HMQ (as appropriate); and
- (d) comply with all reasonable requests of HMQ to provide information relating to Project Co's costs of providing the Service Period Works and the Project Works (including information relating to the anticipated cost of a transfer of such Project Works or Service Period Works to a Successor Project Co).

37.11 Automatic Expiry on Expiry Date

Project Co shall not be entitled to any compensation due to termination of this Agreement on expiry of the Agreement Term on the Expiry Date.

**ARTICLE 38**  
**FORCE MAJEURE**

38.1 Consequences on Force Majeure

- (a) Subject to Section 38.2, the party claiming relief (the “**Affected Party**”) shall be relieved from liability under this Agreement to the extent that, by reason of the Force Majeure Event, it is not able to perform its obligations under this Agreement.
- (b) In respect of a Force Majeure Event that is also a Delay Event pursuant to Section 25.1(a)(vii):
  - (i) Project Co shall only be relieved of its obligations under the Agreement to the extent, if any provided in Article 25 (Delay Events); and
  - (ii) HMQ shall pay to Project Co, on the Completion Date, an amount equal to the Debt Service Amount, together with interest thereon at the rate payable on the principal amount of debt funded under the Senior Financing Agreements, which, but for the Delay Event, would have been paid by HMQ to Project Co.
- (c) If a Force Majeure Event occurs prior to the Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Section 38.1(b)(ii) and Article 39 (Payments on Compensation).

- (d) During a Force Majeure Event which occurs on or after the Completion Date, the provisions of **Schedule F (Payment Mechanism)** will be suspended, and HMQ shall pay to Project Co, for such Contract Month, an amount which reflects the cost to Project Co of the Service Period Works provided to HMQ and the portion of the Project Facilities that is available for use by HMQ, provided that, during such period, the amount paid to Project Co pursuant to this Section 38.1(d) shall never be less than the Debt Service Amount.
- (e) Subject to Article 39 (Payments on Compensation), Project Co's sole right to payment or otherwise in relation to the occurrence of a Force Majeure Event shall be provided in this Article 38.

### 38.2 Mitigation and Process

- (a) Where a party is (or claims to be) affected by a Force Majeure Event, such party shall take commercially reasonable steps to mitigate the consequences of such Force Majeure Event upon the performance of its obligations under this Agreement, shall resume performance of its obligations affected by the Force Majeure Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Affected Party does not comply with its obligations under this Section 38.2, such failure shall be taken into account in determining the Affected Party's entitlement to relief pursuant to this Article 38.
- (c) The Affected Party shall give written notice to the other party within five (5) Business Days of such Affected Party becoming aware of the relevant Force Majeure Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Force Majeure Event.
- (d) A subsequent written notice shall be given by the Affected Party to the other party within a further five (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 Force Majeure Event on the ability of the Affected Party to perform, the action being taken in accordance with Section 38.2(a), the date of the occurrence of the Force Majeure Event and an estimate of the period of time required to overcome the Force Majeure Event and its effects.
- (e) The Affected Party shall notify the other party as soon as the consequences of the Force Majeure Event have ceased.
- (f) If, following the issuance of any notice referred to in 38.2(d), the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event and/or any failure to perform, such party shall submit such further information to the other party as soon as reasonably possible.

### 38.3 Insured Exposure

The compensation payable to Project Co pursuant to this Article 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 Agreement in respect of insurance or the terms of any policy of insurance required under this Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such policy.

### 38.4 Modifications

The parties shall use commercially reasonable efforts to agree to any modifications to this Agreement which may be equitable having regard to the nature of a Force Majeure Event. The Dispute Resolution Procedure shall not apply to a failure of HMQ and Project Co to reach agreement pursuant to this Section 38.4.

### 38.5 Termination

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 Agreement pursuant to Section 38.4 within one hundred and eighty (180) days (or 90 days in the case of a Force Majeure Event resulting from a Relief Event as described in paragraph (h) of the definition of “Force Majeure Event”) of 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 Agreement by written notice to the other party having immediate effect, provided always that the effects of the relevant Force Majeure Event continues during such period to prevent either party from performing a material part of its obligations under this Agreement.

### 38.6 Compensation for Termination on Force Majeure

On termination of the Agreement under Section 38.5, HMQ shall pay to Project Co the “Force Majeure Termination Sum” in accordance with Section 39.1 (Payments of Compensation) and **Schedule G (Calculation of Termination Payments)**.

## **ARTICLE 39 PAYMENTS OF COMPENSATION**

### 39.1 Full Satisfaction

- (a) Except as otherwise provided in Section 39.1(b), any compensation paid pursuant to this Article 39, including pursuant to **Schedule G (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 HMQ 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 Agreement, and the circumstances leading to such breach or termination, and Project Co and HMQ shall be excluded from 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 39.1(a) shall be without prejudice to:
- (i) any liability of either party to the other, including under the indemnities contained in this 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 or taken into account pursuant to **Schedule G (Calculation of Termination Payments)** in determining or agreeing on the HMQ Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value of the Agreement, Force Majeure Termination Sum, Prohibited Acts 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 51.14 of this Agreement or the Sections referred to therein which did not lead to such termination and which arises or continues after the Termination Date.

### 39.2 Rights of Set-Off

If HMQ terminates this Agreement pursuant to Article 39 (Prohibited Acts), HMQ shall only be entitled to set off any amounts which are due to HMQ by Project Co pursuant to the terms of this Agreement against the Prohibited Acts Termination Sum if and to the extent such Prohibited Acts Termination Sum exceeds the Senior Debt Termination Amount.

### 39.3 Method of Payment

If this Agreement is terminated in accordance with the terms hereof, HMQ shall pay to Project Co the Termination Sum in accordance with **Schedule G (Calculation of Termination Payments)**.

## **ARTICLE 40 HMQ STEP-IN RIGHTS**

### 40.1 Entitlement

If any of the following events occur:

- (a) If HMQ reasonably believes that it needs to take action in connection with the Service Period Works:
  - (i) because it considers the circumstances to constitute an Emergency Event; and/or
  - (ii) on *bona fide* grounds of public interest or security; and/or
  - (iii) to discharge a statutory duty; and/or
- (b) If HMQ, acting reasonably, considers that a breach by Project Co of any obligation under this Agreement, or any act or omission on the part of Project Co or any Project Co Party:

- (i) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more Service Period Works;
- (ii) does or can reasonably be expected to materially prejudice the Province's ability to provide courthouse services and engage in Courthouse Activities; and/or
- (iii) may potentially compromise the reputation of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province or the integrity of either the Durham Consolidated Courthouse or the nature of the Province's justice system, so as to affect public confidence in that system; and/or

provided that:

- (A) in respect of a breach by Project Co of any obligation under this 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 Section 40.1(b)(i) or 40.1(b)(ii), HMQ shall not exercise its rights under this Article 40 unless Project Co has failed to cure the relevant breach, act or omission within five (5) Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such five (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 40.1(b)(i) or 40.1(b)(ii) actually occur;
- (B) in respect of 40.1(b)(iii), HMQ shall not exercise its rights under this Article 40 unless Project Co has failed to cure the relevant breach, act or omission, within five (5) Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured with such five (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;
- (c) If HMQ has received a notice under the Service Provider's Direct Agreement that entitles HMQ to exercise step-in rights thereunder; and/or
- (d) If a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations or the Courthouse Activities,

then HMQ shall be entitled to take action in accordance with the following provisions of this Article 40.

#### 40.2 Notice

- (a) If Section 40.1 applies and HMQ wishes to take action, HMQ shall, if it is reasonably practicable to do so prior to stepping in but in any event within five (5) Business Days following HMQ taking such action, notify Project Co in writing of the following:
  - (i) the action required;
  - (ii) the reason for such action;
  - (iii) the time period which it believes will be necessary for such action; and
  - (iv) to the extent practicable, the effect on Project Co and its obligation to provide the Service Period Works during the period such action is being taken.
- (b) If Section 40.1 applies and HMQ has taken the Required Action (as defined below), HMQ shall notify Project Co in writing upon ceasing to take any Required Action.

#### 40.3 Required Action

- (a) HMQ shall take such action required in accordance with Section 40.2 and any consequential additional action as it reasonably believes is necessary (together, the “**Required Action**”) and Project Co shall give all reasonable assistance to HMQ while it is taking such Required Action, and Project Co shall not otherwise interfere with HMQ while it is taking such Required Action. To the extent the Required Action in which Project Co provides reasonable assistance constitutes a Change, HMQ shall reimburse Project Co for its reasonable costs and expenses relating to the assistance provided by it.
- (b) To the extent that any of the events identified in 40.1 which entitle HMQ to take action pursuant to this Article 40 are subject to a cure period set out in the definition of “**Project Co Default**” herein or elsewhere in this Agreement, if HMQ has exercised its step-in rights pursuant to this Article 40 before any cure period otherwise available to Project Co pursuant to the applicable Project Co Default has elapsed, Project Co shall be entitled to the remainder of any such cure periods (if any) upon HMQ ceasing to take the Required Action and Project Co's receipt of notice from HMQ relating thereto in accordance with Section 40.2(b) hereof.

#### 40.4 Required Action Re: Breach

If the Required Action is taken as a result of a breach of the obligations of Project Co under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any part of the Service Period Works:

- (a) Project Co shall be relieved of its obligations to provide such part of the Service Period Works; and
- (b) in respect of the period in which HMQ is taking the Required Action, the Monthly Service Payments due from HMQ to Project Co shall equal the amount Project Co would receive if it were satisfying all of its obligations and providing the Service Period Works affected by the Required Action in full over that period, less an amount equal to all HMQ's reasonable out-of-pocket costs and expenses in taking the Required Action (which will be included as a Deduction to the next Monthly Service Payments).

#### 40.5 Monthly Service Payments

For so long as and to the extent that the Required Action is taken and this prevents Project Co from providing any part of the Service Period Works:

- (a) Project Co shall be relieved from its obligations to provide such part of the Service Period Works; and
- (b) in respect of the period in which HMQ is taking the Required Action, the Monthly Service Payments due from HMQ to Project Co shall equal the amount Project Co would receive if it were satisfying all its obligations and providing the Service Period Works affected by the Required Action in full over that period.

#### 40.6 Subcontracts

Project Co shall ensure that all of the Subcontracts with respect to Service Period Works are consistent with Project Co's obligations with respect to this Article 40.

### **ARTICLE 41 ASSIGNMENTS**

#### 41.1 Assignments etc. by Project Co

- (a) Project Co shall not assign, transfer, charge, gift, sell, dispose, assign, sublet, encumber, create security over or otherwise dispose of this Agreement, the Operating Subcontract or the Construction Subcontract or any agreement entered into in connection with this Agreement or any part thereof or the benefit or advantage of this Agreement, the Operating Subcontract or the Construction Subcontract or any part thereof without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided however that no assignment, transfer, charge, gift, sale, subletting, encumbrance, 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 are inconsistent with MAG's role (in its reasonable opinion) generally in the Province or with respect to the Courthouse Activities, or could reasonably be expected to compromise the reputation of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province or the integrity of the Durham Consolidated Courthouse or are

inconsistent with the nature of the Province's justice system, so as to affect public confidence in that system.

- (b) The restrictions set out in Section 41.1(a) shall not apply in respect of any security or assignment by way of security or other encumbrance in favour of the Senior Lenders created or granted by Project Co pursuant to the Senior Financing Agreements, provided that at the time of such creation or grant the Senior Lenders have entered into the Lenders' Direct Agreement.

#### 41.2 Assignments etc by HMQ

- (a) HMQ shall not transfer, dispose, assign or otherwise dispose of this Agreement or any Project Document except:
  - (i) as may be consented to in writing by Project Co, not to be unreasonably withheld or delayed;
  - (ii) in circumstances other than those described in Section 41.2(a)(i), as may be required to comply with Applicable Law. Notwithstanding the foregoing Section 42.1(a)(ii), if any such transfer, disposition, assignment or other alienation results in the events or circumstances contemplated in paragraph (f) of the definition of "HMQ Default", then Project Co will be entitled to exercise all of its rights under this Agreement relating thereto, including under Article 32 hereof; or
  - (iii) In addition to the designation rights described in Section 47.1, HMQ may assign the whole of the Agreement to any minister of the Crown or a Crown agency having the legal capacity, power, authority and ability to become a party to and to perform the obligations of HMQ under this Agreement provided that such person agrees in writing with Project Co to perform all of HMQ's obligations hereunder and under the other Project Documents to which HMQ is a party.
- (b) Upon any assignment, transfer, disposition or other alienation pursuant to Section 41.2(a), HMQ shall be released of all of its obligations hereunder.

### **ARTICLE 42 CHANGE IN CONTROL AND CHANGE IN OWNERSHIP**

#### 42.1 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or any company of which Project Co is a subsidiary, shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities are inconsistent with MAG's role generally in the Province or with the Courthouse Activities, or may compromise the reputation of HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Province or the integrity of the Durham

Consolidated Courthouse or are inconsistent with the nature of the Province's justice 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 ability of HMQ, MAG or any other Province Person to carry on the Courthouse Activities.
- (b) Prior to the third anniversary of the Completion Date, HMQ shall be entitled to receive a 50 per cent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (c) Subject to Sections 42.1(a) and 42.1(b), no Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (d) This Section 42.1 shall not apply to a Change in Ownership or Change in Control of companies whose equity securities are listed on a recognized stock exchange.
- (e) Whether or not Project Co is required to obtain HMQ's consent to a Change in Ownership or Change in Control pursuant to this Section 42.1, Project Co shall provide notice to HMQ of any Change in Ownership or Change in Control of Project Co, or any company of which Project Co is a subsidiary, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying the then current shareholders and their respective holdings in the voting securities of Project Co, or any company of which Project Co is a subsidiary, as the case may be.

### **ARTICLE 43 DISPUTE RESOLUTION**

#### **43.1 Generally**

- (a) If a Dispute arises under the Agreement which the parties are unable to resolve, then either party may deliver to HMQ's Representative or Project Co's Representative, as applicable, a written notice of Dispute (the "**Notice of Dispute**") which Notice of Dispute shall initiate the dispute resolution process hereunder. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the party issuing the Notice of Dispute and be signed by HMQ's Representative, if given by HMQ, or by Project Co's Representative, if given by Project Co.
- (b) Provided that any disputes in which the Independent Certifier is permitted to determine under this Agreement and have been determined in accordance with this Agreement:
  - (i) any Dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Article 43; and

- (ii) if a Dispute arises in relation to any aspect of this Agreement, Project Co and HMQ shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

#### 43.2 Adjudication

If Project Co and HMQ fail to resolve the Dispute through consultation within fifteen (15) Business Days (or such shorter period as may be agreed or expressly stipulated in respect of the relevant matter), either party may refer the matter to an Adjudicator selected in accordance with Section 43.3 below.

#### 43.3 Selection of Adjudicator

The Adjudicator nominated by the party issuing the Notice of Dispute to consider a Dispute referred to him shall be agreed between the parties or, failing agreement, shall be determined by a court of competent jurisdiction (following application thereto by the party issuing the Notice of Dispute) and shall be:

- (a) independent of and at arm's length to Project Co, HMQ, MAG, the Province, the Senior Lenders and any other person having an interest in the Project Facilities or any of the Project Documents;
- (b) if the Dispute arises during the Service Period, familiar with courthouse operations and in building operations and management;

and shall be one (1) person with expertise with respect to the particular matter in dispute;

The Adjudicator shall be entitled to retain legal counsel who shall be approved by both HMQ and Project Co, acting reasonably.

#### 43.4 Basis of Appointment

The Adjudicator shall resolve the Dispute in the following manner:

- (a) subject to Section 43.5, within seven (7) days of appointment in relation to a particular Dispute, the Adjudicator shall require the parties to submit in writing their respective arguments provided that, where necessary, the onus of proving that the Project Facilities is operating in accordance with all relevant specifications and requirements is on Project Co. The Adjudicator shall in his absolute discretion consider whether a hearing is necessary in order to resolve the dispute;
- (b) in any event, and subject to Section 43.5, the Adjudicator shall provide to both parties his written decision on the Dispute, within ten (10) Business Days of appointment (or such other period as the parties may agree after the reference). The Adjudicator shall give reasons or a summary of reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to an aggrieved party and shall be entitled to state the relief for the aggrieved party, which may include deeming the occurrence of any Relief Event, Delay Event,

Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Agreement, the Adjudicator's decision shall be binding on the parties (but not final) who shall forthwith give effect to the decision;

- (c) the Adjudicator's costs (including legal fees) of any reference shall be borne as the Adjudicator shall specify or in default, equally by the parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful party in an adjudication to pay more than one half of the Adjudicator's Fees. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;
- (e) the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Completion Certificate shall be final and binding;
- (f) all information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save as permitted by Article 48 (Information, Confidentiality and Freedom of Information and Protection of Privacy), disclose to any person any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work; and
- (g) the Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

#### 43.5 Continued Performance During Adjudication

The parties shall, except to the extent they are not capable of performing their respective obligations under this Agreement as a consequence of the matter in dispute, and except for HMQ's rights, pursuant to Article 17 (Price, Payment and Set-Off) to not pay Project Co disputed amounts, continue to comply with, observe and perform all their obligations hereunder and under the Project Documents regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Article 43 and without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement. For greater certainty, in respect of any Dispute relating to Project Works, the



Independent Certifier shall be the decision maker of first instance and the parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned by the Adjudicator. The Adjudicator shall be entitled to award compensation to an aggrieved party (which may include deeming the occurrence of any Delay Event, Relief Event, Compensation Event and/or Excusing Cause) with respect to any costs incurred by such party in complying with the initial decision of the Independent Certifier where such party is later successful in whole or in part, in appealing the decision of the Independent Certifier in accordance with this Article 43.

#### 43.6 Corrective Measures

Where it is determined by the Adjudicator that,

- (a) corrective measures must be taken by Project Co to resolve a problem, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a problem, HMQ may (at its option) require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that HMQ undertakes to pay Project Co for the Direct Costs (plus reasonable overhead and profit incurred by Project Co as such costs are so incurred, provided that no such cost should exceed the amount Project Co is entitled to receive pursuant to Section 10.4(b)) thereby incurred upon completion of those corrective measures (but any such undertaking and payment shall be without prejudice to HMQ's right to contest the determination made by the Adjudicator in a subsequent proceeding). HMQ shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time shall be treated as a Delay Event or an Excusing Cause, as applicable if so determined by the Adjudicator.

#### 43.7 Subcontracting Disputes

- (a) If any Dispute arising under this Agreement raises issues which relate to:
  - (i) any dispute between Project Co and the Construction Subcontractor arising under the Construction Subcontract or otherwise affects the relationship or rights of Project Co and/or the Construction Subcontractor under the Construction Subcontract (the "**Construction Subcontractor Dispute**"); and/or
  - (ii) any dispute between Project Co and the Service Provider arising under the Operating Subcontract or otherwise affects the relationship or rights of Project Co and/or the Service Provider under the Operating Subcontract (the "**Service Provider Dispute**");

then Project Co may include as part of its submissions made to the Adjudicator, submissions made by the Construction Subcontractor and/or by the Service Provider as appropriate.

#### 43.8 Jurisdiction

The Adjudicator shall not have jurisdiction to determine a Construction Subcontractor Dispute or a Service Provider Dispute but the decision of the Adjudicator shall be binding on Project Co and the Construction Subcontractor or on Project Co and the Service Provider insofar as it determines issues of Dispute between Project Co and HMQ.

#### 43.9 Submissions

Any submissions made by the Construction Subcontractor or the Service Provider shall:

- (a) be made within the time limits applicable to the delivery of submissions by Project Co; and
- (b) concern only those matters which relate to the Dispute between HMQ and Project Co under this Agreement.

#### 43.10 Costs

Where the Construction Subcontractor or the Service Provider make submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by HMQ and two-thirds by Project Co.

#### 43.11 No Liability of HMQ

HMQ shall have no liability to the Construction Subcontractor or the Service Provider arising out of or in connection with any decision of the Adjudicator or in respect of the costs of the Construction Subcontractor or the Service Provider in participating in the resolution of any Dispute under this Agreement.

#### 43.12 Access to Documents

Project Co shall not allow the Construction Subcontractor or the Service Provider access to any document relevant to the issues in Dispute between HMQ and Project Co save where:

- (a) the document is relevant also to the issues relating to the Construction Subcontractor Dispute or the Service Provider Dispute as the case may be; and
- (b) Project Co has first delivered to HMQ a written undertaking from the Construction Subcontractor and/or the Service Provider (as appropriate) addressed to HMQ that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or any professional adviser engaged by the Construction Subcontractor or the Service Provider (as appropriate) to advise in

connection with the Dispute, unless such party is required by court order to disclose such documents or information by court order or Applicable Law.

43.13 Expert Determination

- (a) Following the consultation referred to in Section 43.2, if any Dispute as to:
  - (i) whether a Liquid Market exists;
  - (ii) whether amendments proposed by potentially Qualifying Tenderers to this Agreement or other Project Documents are material;
  - (iii) the Adjusted Highest Qualifying Tender Price;
  - (iv) the determination of the Estimated Fair Value of the Agreement in accordance with **Schedule G (Calculation of Termination Payments)**; or
  - (v) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED Rating System in accordance with the specific requirements under this Agreement to achieve LEED Silver Certification;

shall arise between HMQ and Project Co (referred to herein as a “**Specific Dispute**”), either party may give notice to the other party of its intention to refer the Specific Dispute to an Expert (which shall be jointly appointed by HMQ and Project Co) for adjudication in accordance with this Section 43.13. If the parties do not agree on an Expert within five (5) Business Days, then either party may request a court of competent jurisdiction to select an Expert to determine such Specific Dispute. Following selection of the Expert, the party giving such notice (the “**Referring Party**”) shall, within seven (7) days of appointment of the Expert, refer the Specific Dispute to the Expert so appointed.

- (b) The Expert shall make his decision within fifteen (15) Business Days of the date the Specific Dispute was referred to him. The Expert shall be entitled to extend this period by up to fourteen (14) days with the consent of the Referring Party. HMQ and Project Co shall co-operate with the Expert to assist him in complying with this requirement.
- (c) The Expert shall conduct his adjudication in such manner as he shall in his sole and unfettered discretion sees fit, provided that he acts with fairness and impartially and all written communications to and from the Expert and any party shall be copied to the other parties, and the Expert shall not conduct any oral hearing or otherwise discuss the issues relating to the Specific Dispute other than in the presence of representatives of HMQ and Project Co.
- (d) The Expert shall have the power to determine the procedures to be complied with by HMQ and Project Co and to request any of them to provide him with such statements (which shall be written unless otherwise specifically required), documents or information as he may require. The Expert may act inquisitorially and may take the initiative in ascertaining the facts and the law relevant to the Specific Dispute. Without prejudice to any other powers, the Expert shall also

have full power to take advice from other consultants and to undertake such measurements and valuations in each case as may in his opinion be necessary to determine the Specific Dispute.

- (e) The Expert shall, as soon as he is able, give written notice of his decision to the parties. The written notice shall include a concise statement by the Expert of the reasons for his decision and shall be supported by a schedule summarising the documentation, investigations and other evidence considered by the Expert in arriving at his decision.
- (f) The parties hereby agree that the Expert (which expression shall include for the purpose of this Section 43.13 any employee or agent of the Expert) shall not be liable for anything done or omitted in the discharge or purported discharge of his functions unless the act or omission is in bad faith.
- (g) The Expert shall act as adjudicator and not as arbitrator. Unless otherwise provided in this Agreement, the decision of the Expert shall be final and binding on HMQ and Project Co.

#### 43.14 Fees and Expenses

HMQ and Project Co shall share the fees and expenses of the Expert in such proportions as the Expert determines having regard to the Specific Dispute and the conduct of HMQ and Project Co.

#### 43.15 Critical Items

In the event that the dispute relates to one or more of the following elements, features or aspects of the Project Facilities (the “**Critical Items**”) during the Service Period:

- (a) all judicial hearing rooms;
- (b) the security system, including sally port;
- (c) all secure areas of the Project Facilities, including the doors and other entries to such areas;
- (d) all public assembly areas;
- (e) all judicial offices;
- (f) all computer server rooms;
- (g) all exhibit, pre-court files and tape storage rooms;

the effect of which materially impedes the proper functioning of the Courthouse Facilities or materially impedes the proper performance of the Courthouse Activities, such Dispute shall be resolved in accordance with Section 43.16.

#### 43.16 Resolution of Critical Items

- (a) Any dispute with respect to any Critical Item shall be resolved in an expeditious manner and shall not be subject to the Dispute Resolution Procedure set forth in this Article 43 and must be resolved to the satisfaction of MAG and Project Co within two hours of being reported by MAG to Project Co or otherwise identified by MAG. For the purposes of this section, “resolved” means a proposed solution must be agreed between MAG’s manager of court operations and Project Co within that two hour period, including a time frame for implementing a proposed solution. For greater certainty, it is understood that in some cases the nature or extent of a Critical Item may not permit that Critical Item to be solved or otherwise resolved within two hours.
- (b) In the event that:
  - (i) there is a dispute related to a Critical Item that cannot be resolved within the two hours set forth in 43.16(a)
    - (A) as to the existence of a problem or its extent, or
    - (B) with respect to the proposed solution, or
  - (ii) there is a dispute concerning the effectiveness of any solution proposed in respect of a Critical Item,

then that dispute must be resolved by a Qualified Adjudicator within one (1) Business Day of such Qualified Adjudicator being asked to undertake such an adjudication. Decisions of the Qualified Adjudicator are final and binding with respect to the action to be taken, but not with respect to fault or the cost or timing implications of the matter in dispute.

#### 43.17 Miscellaneous

Project Co and HMQ shall diligently carry out their respective obligations under this Agreement during the pendency of any Disputes or disputes, including disputes before the Independent Certifier, arbitration proceedings or litigation proceedings. If during the pendency of Dispute or a dispute it is considered necessary by either party to proceed in respect of the matter that is in dispute, then without prejudice to Project Co’s rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Changes), Project Co shall proceed in accordance with the direction of HMQ, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with HMQ’s position shall, to the extent proceeding in accordance with the direction of HMQ causes a delay in achieving Completion by the Planned Completion Date, as determined by the Adjudicator or the Independent Certifier, as applicable and subject to and in accordance with Article 25 (Delay Events), be treated as a Delay Event and, to the extent determined by the Adjudicator or the Independent Certifier, as applicable to be a Compensation Event and subject to and in accordance with Article 26 (Compensation Events), be treated as a Compensation Event.

## **ARTICLE 44 INTELLECTUAL PROPERTY**

### **44.1 HMQ Materials**

All Intellectual Property Rights in HMQ Materials shall vest in and be the property of HMQ and HMQ Materials shall be delivered by Project Co to HMQ or any Successor Project Co upon the termination or expiry of the Agreement together with all written information, drawings, documents and materials, if any, furnished by HMQ to Project Co in connection with the Service Period Works and/or the Project Works.

### **44.2 Grant of License to Project Co**

HMQ (to the extent that it is able to do so and subject to any pre-existing rights of any third party) hereby grants to Project Co (with the right to grant sub-licences to its Subcontractors, as reasonably required by Project Co, such sub-licences to contain the right to grant any further sub-licences as reasonably required) a non-exclusive, free of charge and royalty-free licence to use HMQ Materials during the Agreement Term, solely and to the extent reasonably necessary to provide the Service Period Works and/or the Project Works. Project Co shall be entitled at its own expense to take and retain copies of HMQ Materials and/or to make (or to allow any Subcontractor or further sub-licensee to make) any modifications and/or enhancements to HMQ Materials as reasonably required by Project Co for the purpose of providing the Service Period Works and/or the Project Works. Project Co may not disclose HMQ Materials to any third party other than to any Subcontractor or further sub-licensee or the Senior Lenders or to its or their respective directors, officers, employees, servants, Subcontractors, agents or professional advisers.

### **44.3 Modifications**

To the extent that Project Co makes (or allows any Subcontractor or further sub-licensee to make) any modifications or enhancements to HMQ Materials, to the extent permitted by law Project Co hereby assigns to HMQ with full title guarantee by way of assignment of present and future copyright, database right and any other rights, all Intellectual Property Rights in such modifications and enhancements, free from any Encumbrance. By virtue of this Section 44.3 all Intellectual Property Rights owned by Project Co or its Subcontractors or further sub-licensees in HMQ Materials shall vest in HMQ on their creation. Project Co shall ensure an assignment to HMQ, on the basis set out in this Section 44.3 from each Subcontractor or further sub-licensee in respect of any Intellectual Property Rights referred to in this Section 44.3 which would otherwise vest in the Subcontractor or further sub-licensee. HMQ hereby grants to Project Co the right to use such modifications and enhancements in accordance with Section 44.2, as though the same were HMQ Materials.

### **44.4 Project Co Materials**

- (a) As between HMQ and Project Co, all Intellectual Property Rights in any and all Project Co Materials created by or on behalf of the Construction Subcontractor shall be the property of Project Co. Project Co hereby grants to HMQ a perpetual, free of charge, royalty-free, non exclusive, irrevocable licence to copy, use, modify, adapt, enhance and reproduce any and all Project Co Materials created by

or on behalf of the Construction Subcontractor (and any designs contained therein) on any medium whatsoever for any purpose whatsoever related to the Project Works including the construction, completion, re-instatement, re-construction, operation, maintenance, repair, refurbishment, modification, advertisement, letting, sale, demolition and/or disposal of the Project Works. Such licence includes a licence to copy and/or use, modify, adapt, enhance and/or reproduce such material for any extension of the Project Works provided that no designs contained in such material may be copied and/or used, modified, adapted, enhanced and/or reproduced for any extension of the Project Works without the prior written consent of Project Co except in so far as it is necessary to use such designs to understand, take into account or establish interfaces with the design of or the construction details of the existing elements of the Project Works. Such licence is capable of assignment and/or sub-licence by HMQ as reasonably required by HMQ for the purpose of procuring the provision of the Service Period Works and/or the Project Works by any Successor Project Co or by any other person without the consent of Project Co provided always that Project Co shall not be liable to the extent such material is used for a purpose other than that for which the same was prepared or provided. Project Co and the Construction Subcontractor shall not be liable in the case of Project Co Materials created by or on behalf of the Construction Subcontractor which have been modified and/or adapted and/or enhanced by HMQ (and, for the avoidance of doubt, not by or on behalf of Project Co or the Construction Subcontractor), to the extent of or as a result of such adaptation and/or enhancement and/or modification and HMQ agrees that it will not modify and/or adapt and/or enhance any Project Co Materials created by or on behalf of the Construction Subcontractor at any time prior to the earlier of the Completion Date and the end of the Agreement Term.

- (b) All Intellectual Property Rights in any and all Project Co Materials not created by or on behalf of the Construction Subcontractor shall as between HMQ and Project Co remain the property of Project Co. Project Co hereby grants to HMQ a worldwide, perpetual, irrevocable, non-exclusive, free of charge and royalty-free licence to use, modify, adapt and enhance such Project Co Materials, and at its own expense to take and retain copies of such Project Co Materials, for any purpose reasonably required by it relating to the Project (with a right to grant sub-licences or assign such rights as reasonably required by HMQ for the purpose of procuring the provision of the Service Period Works and/or the Project Works by any Successor Project Co or by any other person) provided always that Project Co shall not be liable to the extent such material is used for purposes other than that for which the same was prepared or provided. Project Co shall, in any event, ensure that HMQ has all rights in such Project Co Materials necessary to receive the benefit of the Service Period Works and/or the Project Works (whether Project Co Materials are the property of Project Co or any third party). HMQ's right to use, modify, adapt, enhance and copy such Project Co Materials shall be limited to application of the same in connection with the Project. Project Co shall deliver to HMQ or any Successor Project Co or any third party nominated by HMQ upon termination or expiry of the Agreement copies of such Project Co Materials licensed to HMQ under the Agreement for any purpose reasonably required by it relating to the Project.

#### 44.5 Government Use of Documents

- (a) Project Co and HMQ hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Agreement that might prohibit or otherwise interfere with MAG's, HMQ's, the Government of Ontario's or any other ministry or crown agent of the Government of Ontario's ability to use either this Agreement or the RFP in any manner desired by MAG, HMQ or the Government of Ontario.
- (b) Each of Project Co and HMQ hereby consents to the use by MAG, HMQ and/or the Government of Ontario (including any ministry or crown agent of the Government of Ontario) of this Agreement, or any portion thereof, subject to compliance with the FIPPA and to the removal by HMQ (in consultation with Project Co) of any information supplied in confidence to MAG, HMQ and/or the Government of Ontario (including any ministry or crown agent of the Government of Ontario) by either party in circumstances where disclosure may be refused under section 17(1) of the FIPPA.

#### 44.6 Jointly Developed Materials

- (a) The parties hereby acknowledge and agree that HMQ shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property Rights associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of HMQ, 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) HMQ hereby grants Project Co a non-exclusive and non-transferable licence, with a right to grant sub-licenses to Subcontractors, to use the Jointly Developed Materials during the Agreement Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Agreement or its Subcontract, as applicable.
- (c) Upon termination of this 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 or its Subcontractors to HMQ.

#### 44.7 Notice

The parties will promptly inform each other in writing if any of them becomes aware of any allegations of infringement of Intellectual Property Rights in either Project Co Materials, the HMQ Materials or the Jointly Developed Materials, and will not make any admission about them without first obtaining the other party's written consent.



#### 44.8 Third Party Disputes

In the event that there is a dispute between Project Co and a third party concerning the Intellectual Property Rights in Project Co Materials, Project Co will liaise, consult and co-operate with HMQ and keep it fully informed at all stages of the negotiations and/or litigation.

#### 44.9 No Infringement

Project Co represents, warrants and undertakes that any Project Co Materials do not and will not infringe any third party's copyright, moral rights, design rights, trademark or any other Intellectual Property Rights whatsoever or wheresoever existing (whether or not such rights are registered or registerable). HMQ represents, warrants and undertakes that any HMQ Materials do not and will not infringe any third party's copyright, moral rights, design rights, trademarks or any other Intellectual Property Rights whatsoever or wheresoever existing (whether or not such rights are registered or registerable).

#### 44.10 Third Party Rights

In the event that:

- (a) the use or possession of Project Co Materials by Project Co (including all licensed software) is held by a court which has the authority to settle the claim to constitute an infringement of a third party's Intellectual Property Rights; or
- (b) Project Co is given legal advice by an appropriately-qualified adviser appointed jointly with HMQ, or in the event of the parties failing to agree, a lawyer of not less than five (5) years' call that the use or possession of Project Co's Materials (including all licensed software) is likely to constitute an infringement of a third party's Intellectual Property Rights;

then Project Co will promptly and at its own expense:

- (i) (a) obtain for HMQ the right to continue using and possessing the relevant Project Co Materials; or
  - (b) modify or replace Project Co Materials (without detracting from the overall performance, functionality and other characteristics of the relevant Project Co Materials) so as to avoid the infringement; and
- (ii) provide such replacement licensed software as may be acceptable to HMQ, acting reasonably.

#### 44.11 Electronic Records

Except in respect of As-Built Drawings and Record Drawings, Project Co records may, with the consent of HMQ, acting reasonably, be stored in electronic form if HMQ has access thereto and will continue to have access thereto, such that HMQ will be able to read, copy, download and search same without license or payment.

## **ARTICLE 45 PERSONAL DATA**

### 45.1 Compliance

In relation to all Personal Data, Project Co shall at all times comply with Applicable Law.

### 45.2 Processing of Personal Data

Project Co and any Subcontractor or Special Projects Subcontractor shall only undertake processing of Personal Data reasonably required in connection with the Project Operations or the Special Projects Services, as the case may be.

### 45.3 No Disclosure

Project Co shall not disclose Personal Data to any third parties other than:

- (a) to employees, Subcontractors and Special Projects Subcontractors to whom such disclosure is reasonably necessary in order for Project Co to carry out the Project Operations or Special Projects Services, as the case may be; or
- (b) to the extent required under Applicable Law;

provided that disclosure under Section 45.3(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in Section 45.1 and that Project Co shall give notice in writing to HMQ of any disclosure of Personal Data it or a Subcontractor or Special Projects Subcontractor is required to make under Section 45.3(b) immediately it is aware of such a requirement

### 45.4 Prevention

Project Co shall bring into effect and maintain all reasonable technical and organizational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of all Project Co Parties having access to the Personal Data.

### 45.5 Written Descriptions

HMQ may, at reasonable intervals, request a written description of the technical and organizational methods employed by Project Co in respect of the Subcontractors, Special Projects Subcontractors and other Project Co Parties referred to in Section 45.4. Within thirty (30) days of such a request, Project Co shall supply written particulars of all such measures with sufficient detail for HMQ to determine whether or not, in connection with the Personal Data it is compliant with Applicable Law.

**ARTICLE 46**  
**PROJECT CO'S RECORDS**

46.1 Proper Books and Records

Project Co shall keep proper books and records relating to the Project Assets, the New MAG FF&E, the Service Period Works and this Agreement to enable HMQ or a Successor Project Co if required, to commence to provide the Service Period Works as soon as reasonably practicable on termination of this Agreement. Project Co shall also:

- (a) maintain Full Records of particulars of the costs of performing the Service Period Works and the Project Works and such records shall further include details of any commitments made by Project Co for future expenditure and details of any funds held by Project Co and when requested by HMQ, furnish the summary of any of the aforementioned costs in such form and detail as HMQ may reasonably require;
- (b) ensure that each Subcontractor and Special Projects Subcontractor shall maintain Full Records of particulars of the costs of performing its obligations under any Subcontract and Special Projects Subcontract and that HMQ shall on request be furnished with details thereof in such form and detail as HMQ may reasonably require;
- (c) provide such facilities as HMQ may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Section;
- (d) keep (subject to Section 46.8) the books and records referred to in this Section 46.1 until at least seven (7) years after the date of creation of such books or records or, if later, the end of the statutory retention period therefor (the "**Required Retention Period**").

46.2 Accounting Records

Project Co shall keep (and where appropriate shall ensure that the Subcontractors and Special Projects Subcontractors shall keep) books of account in accordance with GAAP with respect to this Agreement showing in detail:

- (a) administrative overheads;
- (b) payments made to Subcontractors and Special Projects Subcontractors;
- (c) capital and revenue expenditure;
- (d) expenditure on wages and salaries;
- (e) expenditure on consumable items;
- (f) such other items as HMQ may reasonably require

and Project Co shall have (and ensure that the Subcontractors and Special Projects Subcontractors shall have) appropriate records and accounts and the books of account evidencing the items listed in Sections 46.2(a) to 46.2(f) available for inspection by HMQ (and any expert) upon reasonable notice, and shall present a report of these to HMQ as and when requested.

#### 46.3 Health and Safety Maintenance

Project Co shall maintain or ensure that the following are maintained:

- (a) Full Records of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- (b) Full Records of maintenance procedures carried out during the term of this Agreement;

and Project Co shall have the items referred to in Sections 46.3(a) to 46.3(b) available for inspection by HMQ upon reasonable notice, and shall present a report of them to HMQ as and when requested.

#### 46.4 Examination by HMQ

Project Co shall permit records referred to in this Article 46 to be examined and copied by HMQ's Representative and/or the Audit Team (whether such records are held by Project Co or by a third party on behalf of Project Co), subject to compliance with FIPPA and to the removal by HMQ (in consultation with Project Co) of any trade secrets or scientific, technical, commercial, financial or labour relations information supplied in confidence to HMQ's representatives and/or the Audit Team by either party in circumstances where disclosure may be refused under Section 17(1) of FIPPA.

#### 46.5 Information Following Termination

Upon termination of this Agreement, and in the event that HMQ wishes to enter into another Agreement for the operation and management of the Project, Project Co shall (and shall ensure that the Subcontractors and Special Projects Subcontractors will) comply with all reasonable requests of HMQ to provide information relating to Project Co's costs of providing the Service Period Works, the Project Works and any Special Projects Services.

#### 46.6 Cost Audits

HMQ's right of access to records of account shall include cost audits for verification of cost expenditure.

#### 46.7 Examination

Notwithstanding the foregoing rights and obligations the Audit Team may for the purpose of:

- (a) the examination and certification of the accounts of HMQ; or

- (b) any examination pursuant to value for money test of the economy, efficiency and effectiveness with which HMQ has used its resources;

examine such documents as it may reasonably require which are owned, held or otherwise within the control of Project Co and may require Project Co to produce such oral or written explanations as he considers necessary.

#### 46.8 Without Prejudice

Within the Required Retention Period and without prejudice to Section 46.1(d):

- (a) in relation to each book or record, at least six (6) months prior to the date on which Project Co or any Project Co Party intends to dispose of it but not more than nine (9) months prior to the date on which Project Co or any Project Co Party intends to dispose of it, Project Co shall notify HMQ in writing of the date of intended disposal and giving sufficient details of the books or records which Project Co or any Project Co Party will no longer be required to retain after the Required Retention Period has expired to enable HMQ to decide whether to retain all or some of such books or records;
- (b) HMQ shall notify Project Co in writing at least thirty (30) days before the date of intended disposal (as specified in Project Co's notice of disposal) if HMQ wishes to retain all or some of the relevant books or records; and
- (c) if HMQ gives notice to Project Co pursuant to Section 46.8(b) that it wishes to retain all or some of the books and records then Project Co shall hand over to HMQ the relevant books or records as soon as reasonably practicable; but
- (d) if HMQ does not serve notice pursuant to Section 46.8(b) or notifies Project Co in writing that it does not wish to retain such books or records pursuant to Section 46.8(c) then Project Co may dispose of the relevant books or records at any time after the expiry of the relevant Required Retention Period provided that such books and records are treated as confidential waste.

#### 46.9 List Following Termination

- (a) Project Co shall give HMQ, within sixty (60) days after termination of this Agreement, a written list detailing books and records retained pursuant to this Article 46, and:
  - (i) if HMQ gives written notice to Project Co within four (4) months of receipt of Project Co's list pursuant to this Article 46 stating that it requires some or all of the books and records to be handed over then Project Co shall hand over the books and records requested as soon as reasonably practicable and in any event within one hundred and twenty (120) days of receipt of HMQ's notice; or
  - (ii) if HMQ does not serve notice pursuant to Section 46.9(a)(i) or notifies Project Co in writing that it does not wish to retain such books or records

then Project Co may dispose of the relevant books or records at any time after four (4) months after the receipt by HMQ of Project Co's list pursuant to this Article 46 provided that such books and records are treated as confidential waste.

- (b) Project Co may retain copies of such books and records as necessary to comply with governmental, tax and securities filings and requirements.

#### **ARTICLE 47 HMQ DESIGNATE**

##### 47.1 Right to 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 HMQ under this Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ for review, approval, comment, evaluation or otherwise as described in this Agreement, engage in discussions, consultations and meetings with Project Co, submitting notices and documentation to HMQ, issuances of notices, documentation, HMQ Change Orders 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, 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 in writing that such designated Person is no longer the person designated by HMQ 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 in writing of any designation hereunder. The rights and obligations of the parties to this Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 47.1.

#### **ARTICLE 48 INFORMATION, CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

##### 48.1 Acknowledgement

Project Co acknowledges that HMQ is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), R.S.O.1990, F-3 and the regulations time to time, in the course of providing the Project Operations.

##### 48.2 Designated Person

Prior to the Effective Date, Project Co shall designate a person to be responsible for records management, access to information and protection of privacy matters.

#### 48.3 Control of Records

Project Co and HMQ acknowledge and agree that all records as defined under FIPPA that are created or maintained in the course of providing the Project Operations that are subject to the application of FIPPA are or will be under HMQ's "control" within the meaning of section 10(1) of FIPPA.

#### 48.4 Requests for Access

- (a) If a request is made to Project Co under FIPPA for access to records generated or maintained in the course of providing the Project Operations, such request must be directed to HMQ, together with copies of all responsive records in the custody or under the control of Project Co, within seven (7) Business Days of receipt of the request.
- (b) If a request is made to HMQ under FIPPA for access to records generated or maintained in the course of providing the Project Operations, Project Co must provide all responsive records in its custody or under its control to HMQ, within seven (7) Business Days of being directed to do so by HMQ.

#### 48.5 Costs

The costs associated with the search, preparation, processing and copying of records for disclosure shall be in accordance with FIPPA and its regulations, as amended, and such costs will be added into the Monthly Service Payment.

#### 48.6 Confidentiality

Subject to FIPPA and the *Auditor General Act* (Ontario) in the case of HMQ and other Applicable Law, and 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 and the parties shall keep confidential all Confidential Information and shall use all reasonable efforts to prevent their employees and agents from making any disclosure to any person of any matter relating to the Confidential Information, provided that this Section 48.6 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 Agreement or any Project Document.

#### 48.7 Disclosure

- (a) Subject to Sections 48.7(b), 48.7(c) and 48.8, but notwithstanding anything else in this Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, HMQ has a right to disclose or publish (including on websites) this Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Agreement or the information related to the performance of

Project Co (or any Project Co Party) as HMQ, in its sole discretion, may consider appropriate. In exercising its discretion, HMQ will be guided by the principles set out in Sections 48.7(b) and 48.7(c).

- (b) HMQ will not disclose portions of this Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Agreement or the information related to the performance of Project Co (and Project Co Parties), which falls within a mandatory exemption under FIPPA and where such disclosure could reasonably be expected to:
  - (i) significantly prejudice the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
  - (ii) result in similar information no longer being supplied to MAG, HMQ and/or the Government of Ontario where it is in the public interest that similar information continue to be so supplied;
  - (iii) result in undue loss or gain to any person, group, committee or financial institution or agency; or
  - (iv) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.
- (c) Notwithstanding Section 48.7(b), but subject to Section 48.8, 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), HMQ may disclose such information.

#### 48.8 Redaction

- (a) Prior to disclosing or publishing this Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Agreement or the information related to the performance of Project Co (or any Project Co Party), HMQ shall provide to Project Co a redacted version of this 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 48.7(b).
- (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 48.7(b) and, accordingly, would be exempt from disclosure under the FIPPA, the dispute may be referred for resolution in accordance with the Dispute Resolution Procedure, and HMQ 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.

#### 48.9 Disclosure to Government

- (a) Project Co acknowledges and agrees that HMQ will be free to disclose any information, including Confidential Information, to HMQ, MAG and/or the Government of Ontario (including any and all ministries and crown agents of the Government of Ontario), and, subject to compliance with FIPPA and subject to Section 48.8, the Government of Ontario and all ministries and crown agents of the Government of Ontario will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as the Government of Ontario see fit.
- (b) For greater certainty, Project Co and HMQ acknowledge and agree that, subject only to the removal of any information which the parties are (or would be) entitled to refuse to disclose pursuant to FIPPA and subject to Section 48.8, this Agreement, any contractual submissions or other records kept in accordance with this Agreement, any information related to the performance of Project Co (and Project Co Parties) or any information derived from this Agreement or the information related to the performance of Project Co (and Project Co Parties) are public documents and information and, as such, may be disclosed by the Government of Ontario or any ministry or crown agent of the Government of Ontario. Project Co acknowledges and agrees that HMQ shall disclose any and all information which the legislative assembly in Ontario requires it to disclose.

#### 48.10 Use and Disclosure of Confidential Information

- (a) Project Co acknowledges that MAG, HMQ, the Government of Ontario and/or any ministry or crown agent of the Government of Ontario may use the Project Co Confidential Information for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. HMQ, and/or the Government of Ontario will advise Project Co prior to using any Project Co Confidential Information for non-Project purposes.
- (b) Subject to the foregoing, neither HMQ or Project Co 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 Agreement, as permitted by this Agreement or as authorized by the disclosing Party in writing.
- (c) 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 less than a reasonable degree of care.

#### 48.11 Exceptions

- (a) Subject to FIPPA in the case of HMQ and other Applicable Law, information of a party (the “**Proprietor**”) will not be considered to be Confidential Information in the following circumstances:
  - (i) the Proprietor advises the other party to whom the information is disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
  - (ii) information that is reasonably required by persons engaged in the performance of its obligations under the Agreement;
  - (iii) the information is, as of the Date of Agreement, or becomes at any time thereafter, generally available to or accessible to the public through no fault or wrongdoing of the Confidant;
  - (iv) the information is a matter of public record or in the public domain;
  - (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 HMQ upon termination of this Agreement, pursuant to Article 37 (Termination or Expiry of the Agreement) or is otherwise required by HMQ for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Project Facilities, the operation, maintenance or improvement of the Project Facilities, 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.
- (b) Subject to FIPPA in the case of HMQ and other Applicable Law, Sections 48.6, 48.7 and 48.10 shall not apply to:
  - (i) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;

- (ii) any provision of information to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or any financial rating agencies, or where it is proposed that a person should or may provide funds or financial support (whether directly or indirectly and whether by loan, equity participation or otherwise) to Project Co to enable it to carry out its obligations under the Agreement, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (iii) any disclosure by HMQ of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting due diligence exercise to:
  - (A) any proposed new Project Co, its advisers and lenders, should HMQ decide to retender the Agreement; or
  - (B) any person in connection with Article 50 (Market Testing);
- (iv) any registration or recording of the Consents and property registration required;
- (v) any disclosure of information by HMQ to any other department, office or agency of the Government of Ontario;
- (vi) any disclosure by HMQ of any document related to the Agreement to which it is a party and which Project Co (acting reasonably) has agreed with HMQ contains no commercially sensitive information;
- (vii) any disclosure for the purpose of:
  - (A) the examination and certification of HMQ's or Project Co's accounts; or
  - (B) any examination pursuant to value for money of the economy, efficiency and effectiveness with which HMQ has used its resources.

#### 48.12 Continued Obligations

The obligations in Section 48.6 to 48.10 will cease on the date that is three (3) years after the Termination Date and accordingly shall survive the termination of this Agreement.

#### 48.13 Recipients Bound

Where disclosure is permitted under Section 48.11(a)(ii), 48.11(b)(i), 48.11(b)(ii), 48.11(b)(iii), 48.11(b)(v) or 48.11(b)(vii), the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

48.14 No Other Purpose

- (a) Project Co shall not make use of the Agreement or any information issued or provided by or on behalf of HMQ in connection with the Agreement otherwise than for the purpose of the Agreement, except with the written consent of HMQ.
- (b) Where Project Co, in carrying out its obligations under the Agreement, is provided with information relating to any person (including Province Persons and litigants), Project Co shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless Project Co has sought the prior written consent of that person and has obtained the prior written consent of HMQ.

48.15 Delivery to HMQ

On or before the Expiry Date, Project Co shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any person (including Province Persons and litigants) including any documents in the possession, custody or control of a Subcontractor or Special Projects Subcontractor, are delivered up to HMQ.

48.16 Personal Information

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require its Subcontractors and Special Projects Subcontractors to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ and only to the extent necessary to perform Project Co's obligations under this Agreement.
- (c) Project Co shall, and shall require its Subcontractors and Special Projects Subcontractors to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the HMQ Facilities Management Requirements and the requirements of Applicable Law, including the FIPPA.
- (d) Project Co shall take all necessary and appropriate action, and shall require its Subcontractors and Special Projects Subcontractors to take all necessary and appropriate action, against any person who fails to comply with this Section 48.16.
- (e) Project Co shall allow HMQ on reasonable notice to inspect the measures of Project Co, the Subcontractors and any Special Projects Subcontractors to protect Personal Information.

**ARTICLE 49**  
**BENCHMARKING**

49.1 Notice of Benchmarking Exercise

- (a) Either (i) Project Co may, at least twelve (12) months before each Review Date but no earlier than sixteen (16) months before each Review Date, give notice to HMQ that it wishes to carry out a benchmarking exercise (the “**Benchmarking Exercise**”) or (ii) HMQ may, at least twelve (12) months before each Review Date but no earlier than sixteen (16) months before each Review Date, give notice to Project Co that it requires Project Co to carry out a Benchmarking Exercise, in each case of one or more of the Market Tested Services, rather than Market Testing as otherwise provided in Article 50 (Market Testing).
- (b) Unless otherwise agreed by HMQ and Project Co, such notices referred to in Section 49.1(a) may only be given, and Project Co shall only be entitled to or required to, as applicable, carry out a Benchmarking Exercise, in respect of a Market Tested Service if the Service Provider or the relevant Subcontractor, as the case may be, has been served three (3) or less Warning Notices in respect of the Market Tested Service with respect to which the Benchmarking Exercise is being undertaken, over the preceding twelve (12) month period prior to the date of any such notice.

49.2 Benchmarking Meetings and Preliminary Benchmarking Proposals

- (a) Within seven (7) days after receipt by HMQ of the notice referred to in Section 49.1(a)(i) and within thirty (30) days after receipt by Project Co of the notice referred to in Section 49.1(a)(ii), Project Co shall provide HMQ with a preliminary benchmarking proposal (the “**Preliminary Benchmarking Proposal**”) outlining the procedure for, and factors to be taken into account in the Benchmarking Exercise to ensure that the Market Tested Services are compared on a like to like basis with suitable comparators and reliable information, which shall include comparing the standards, quality and prices of such Market Tested Services and the costs of providing them with the standards, quality and prices of equivalent services and the costs of providing them in similar circumstances by reputable organizations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of such Market Tested Services.
- (b) Within seven (7) days after receipt by HMQ of a Preliminary Benchmarking Proposal, HMQ and Project Co shall meet to (i) discuss and agree on the Preliminary Benchmarking Proposal, and if requested, Project Co shall prepare addenda to such Preliminary Benchmarking Proposal reflecting such discussion and agreement; and (ii) review the HMQ Facilities Management Requirements for each Market Tested Service that will be subject to the Benchmarking Exercise and, if required by HMQ, amend the relevant HMQ Facilities Management Requirements to be applicable to the Market Tested Service after the Review Date, as appropriate.

- (c) If, in respect of a notice provided by Project Co pursuant to Section 49.1(a)(i) or in respect of a notice provided by HMQ pursuant to Section 49.1(a)(ii), Project Co cannot establish to HMQ's satisfaction, acting reasonably, that for a Market Tested Service there are suitable comparators and reliable information as described in Section 49.2(a), then the Benchmarking Exercise for that Market Tested Service shall not proceed and Market Testing of such Market Tested Service shall be as otherwise provided in Article 50 (Market Testing).
- (d) If, in respect of a notice provided by Project Co pursuant to Section 49.1(a)(i) or in respect of a notice provided by HMQ pursuant to Section 49.1(a)(ii), Project Co can establish to HMQ's satisfaction that there are suitable comparators and reliable information as described in Section 49.2(a), then HMQ may determine, in its sole discretion, that the Benchmarking Exercise for that Market Tested Service shall proceed in accordance with this Article 49. If HMQ does not determine that the Benchmarking Exercise shall proceed then Market Testing of that Market Tested Service shall proceed in accordance with Article 50 (Market Testing).

#### 49.3 Benchmarking Proposal and Benchmarking Exercise

- (a) Project Co shall, prior to the start of the Benchmarking Exercise, submit a proposal to HMQ (the "**Benchmarking Proposal**") which details the pricing of each Market Tested Service that is the subject of the Benchmarking Exercise. The pricing shall not exceed any amount quoted by the Service Provider or the relevant Subcontractor that is applicable for the period after the Review Date.
- (b) After Project Co submits the Benchmarking Proposal, Project Co shall carry out the Benchmarking Exercise for the relevant Market Tested Services.
- (c) Project Co agrees that any person selected to take part in the Benchmarking Exercise shall be required to provide appropriate warranties and supporting evidence (where appropriate) in respect of the information provided as part of the Benchmarking Exercise.
- (d) Project Co agrees that the contractual obligations and liabilities in respect of Market Tested Services shall be the same as those applicable to such Market Tested Services under this Agreement which are in force at the relevant Review Date.
- (e) Project Co shall make the results of each Benchmarking Exercise available to HMQ on an open book basis.
- (f) Project Co shall maintain complete and accurate records of each Benchmarking Exercise and shall prepare a benchmarking report no later than nine (9) months prior to the relevant Review Date, which report compares a selection of key standards, specifications, costs, performance indicators and processes in respect of the Market Tested Services with the equivalent prevailing market or a representative sample of buildings. In addition, Project Co shall provide HMQ with all necessary supporting documentation and such other information for full transparency of relevant cost and other information relating to the Benchmarking

Exercise as HMQ may reasonably require in order to evaluate properly the results of the Benchmarking Exercise. Such additional information requested by HMQ may include, without limitation, commercial information on the existing Market Tested Services such as pay rates, input hours for delivery of each element of the Market Tested Services, materials and equipment, expected profit margin of the Service Provider and other relevant Subcontractors, and contribution to overheads. HMQ and Project Co shall agree upon the Benchmark Price and if, provided that each of HMQ and Project Co acts reasonably, no agreement can be reached, Article 50 (Market Testing) shall apply.

#### 49.4 Benchmarking Results

- (a) In respect of a notice of a Benchmarking Exercise provided by Project Co or HMQ pursuant to Section 49.1(a) which results in the preparation by Project Co of a Benchmarking Proposal and conducting a Benchmarking Exercise, if the pricing of a Market Tested Service in the Benchmarking Proposal is less than the Benchmark Price, then Project Co shall confirm the appointment of the relevant Service Provider then providing such Market Tested Service to continue providing such Market Tested Service for a further five year term and the re-pricing of such Market Tested Service shall be at the pricing set out in the Benchmarking Proposal.
- (b) In respect of a notice of a Benchmarking Exercise provided by Project Co pursuant to Section 49.2(a) which results in the preparation by Project Co of a Benchmarking Proposal and conducting a Benchmarking Exercise, if the pricing of a Market Tested Service in the Benchmarking Proposal is within the Benchmark Price, then at Project Co's option Project Co shall confirm the appointment of the relevant service provider then providing such Market Tested Service to continue providing such Market Tested Service for a further five year term at the pricing set out in the Benchmarking Proposal. If Project Co does not exercise such option, then Market Testing of such Market Tested Service shall be as otherwise provided in Article 50 (Market Testing).
- (c) In respect of a notice of a Benchmarking Exercise provided by HMQ pursuant to Section 49.1(a)(ii) which results in the preparation by Project Co of a Benchmarking Proposal and conducting a Benchmarking Exercise, if the pricing of a Market Tested Service in the Benchmarking Proposal is within the Benchmark Price, then at HMQ's option, Project Co shall confirm the appointment of the relevant Service Provider then providing such Market Tested Service to continue providing such Market Tested Service for a further five year term at the pricing set out in the Benchmarking Proposal. If HMQ does not exercise such option, then Market Testing of such Market Tested Service shall be as otherwise provided in Article 50 (Market Testing).
- (d) If the pricing of a Market Tested Service in the Benchmarking Proposal is more than the Benchmark Price, then Market Testing of such Market Tested Service shall be conducted as otherwise provided in Article 50 (Market Testing).

#### 49.5 Acknowledgement re: Benchmarking

HMQ and Project Co acknowledge and agree that the Benchmarking Exercise is intended to be an expedited process that is completed at least nine (9) months prior to the relevant Review Date to allow time for Market Testing to proceed as otherwise provided in Article 50 (Market Testing), and accordingly, either Project Co or HMQ may, at any time after the date that is fourteen (14) months prior to the relevant Review Date request a meeting with the other party to discuss the likelihood and scope of the Benchmarking Exercise, as is then known to HMQ and Project Co, and to review the proposed timeline, details and issues concerning a Benchmarking Exercise. The other party shall meet with the requesting party and both shall, acting reasonably, consider the timelines set out in this Article 49 and if agreed, the timelines set out in this Article 49 shall be modified for the Benchmarking Exercise.

#### 49.6 Dispute Notice

HMQ may by notice to Project Co served within thirty (30) days of receipt of the Benchmarking Proposal dispute the required adjustment to the Monthly Service Payments, and if such adjustment has not been agreed or determined on or before the date four (4) months prior to the Review Date then either party may refer the matter to the Dispute Resolution Procedure.

#### 49.7 Monthly Service Payment Adjustments

- (a) On the completion of the re-pricing of a Market Tested Service pursuant to the Benchmarking Exercise, the Annual Service Payment and the Monthly Service Payments shall be altered in accordance with **Schedule F (Payment Mechanism)**.
- (b) Any alteration of the Annual Service Payment and Monthly Service Payments shall take effect on the Review Date to which the Benchmarking Exercise related.

#### 49.8 Costs of Benchmarking

All costs in connection with the preparation of each Preliminary Benchmarking Proposal, each Benchmarking Proposal and each Benchmarking Exercise (including, without limitation, all out-of-pocket costs, fees and expenses) shall be borne by Project Co in the case where such activities are initiated by Project Co and by HMQ in the case where such activities are initiated by HMQ.

### **ARTICLE 50 MARKET TESTING**

#### 50.1 Market Testing Meetings

- (a) Except as provided in Section 49.1, at least eight (8) months prior to each Review Date Project Co and HMQ shall hold Market Testing Meetings in respect of all Market Tested Services.
- (b) Market Testing will be undertaken in respect of the Market Tested Services and will be undertaken to ascertain the relative competitiveness of the Market Tested Services provided. Market Testing will be the responsibility of Project Co



(notwithstanding any other provision of this Article 50) and shall be carried out in accordance with this Article 50 so that the Preferred Service Tenderer(s) shall, if appointed to act as a Subcontractor to provide the applicable Market Tested Service, commence provision of the relevant Market Tested Services on the relevant Review Date.

- (c) The Market Testing Meetings in respect of Market Tested Services will be held:
  - (i) to review the HMQ Facilities Management Requirements for each Market Tested Service and if required by HMQ and to amend the relevant HMQ Facilities Management Requirements, as appropriate;
  - (ii) to discuss and seek to agree upon any grouping or groupings of Market Tested Services or any division of any Market Tested Service into separate parts which will optimize the opportunity for HMQ to obtain best value for money;
  - (iii) to discuss and seek to agree upon the appropriate media for advertising the Market Tested Services and identifying the Prospective Service Tenderers;
  - (iv) to discuss and seek to agree upon the basis on which the Service Tenderers shall be selected by Project Co from among the Prospective Service Tenderers; and
  - (v) to discuss and seek to agree upon the Service Tender Requirements which shall be in sufficient detail to allow Project Co, with HMQ's agreement, to determine the Preferred Service Tenderer and shall include, without limitation:
    - (A) a statement of the Service Tender Validity Period;
    - (B) requirements in respect of the possible grouping or groupings of Market Tested Services and any division of any Market Tested Service into separate parts;
    - (C) details of the tender evaluation criteria;
    - (D) the information Service Tenderers are required to provide; and
    - (E) details of the required financial capacity and performance security/guarantees to be provided to support the Preferred Service Tenderer's obligations.
- (d) Any tender evaluation criteria agreed between Project Co and HMQ and made available to the Service Tenderers as part of the Service Tender Requirements must be objective and impartial.
- (e) Project Co shall provide at least one month's prior written notice to HMQ of the time, place and agenda for the first Market Testing Meeting. Thereafter, each

subsequent Market Testing Meeting shall be convened on not less than seven (7) days notice, with such notice identifying the agenda items to be discussed at the Market Testing Meeting, provided that in emergencies a Market Testing Meeting may be called at any time on such notice as may be reasonable in the circumstances. HMQ and Project Co shall hold Market Testing Meetings as often as necessary.

## 50.2 Grouping of Service Period Works

Unless Project Co can demonstrate to HMQ that it will optimize its ability to obtain best value for money for HMQ if Market Tested Services are tendered separately or in particular groupings, or if any Market Tested Service is divided into separate parts, the grouping of any Market Tested Service shall be left to the discretion of Service Tenderers on the basis that the Service Tender Requirements shall specify that:

- (a) Service Tenderers may submit tenders for all or any of the Market Tested Services which are the subject of Market Testing; and
- (b) Where a Service Tenderer submits a tender for a group or groups of Market Tested Services, it may be required to provide all or any of the services in such group or groups and shall, in any event, provide separate pricing for each service in such group or groups.

## 50.3 Market Testing Proposal

- (a) Notwithstanding any failure of HMQ and Project Co to agree upon any matter referred to in Section 50.1(c), Project Co shall prepare and deliver to HMQ no later than six (6) months before the relevant Review Date a draft market testing proposal (the “**Draft Proposal**”) describing in detail Project Co’s proposals for the Market Testing of each Market Tested Service and describing the procedure that Project Co Parties will follow to ensure that there is no disruption to the Service Period Works if a Preferred Service Tenderer is appointed to act as the service provider in respect of the applicable Market Tested Service. The Market Testing Proposal shall describe all of the matters referred to in, and agreed pursuant to, Section 50.1(c) and the form of contract which the Preferred Service Tenderer will be required to accept.
- (b) HMQ may, within thirty (30) days of HMQ’s receipt of the Draft Proposal, provide comments and request amendments to the Draft Proposal and Project Co shall revise the Draft Proposal as required by HMQ.
- (c) If Project Co and HMQ are unable to agree on any matter relating to the Draft Proposal within 60 days of HMQ’s receipt of the Draft Proposal, either HMQ or Project Co may refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- (d) It shall be a principle of the Market Testing Proposal that, unless otherwise agreed by HMQ and Project Co, the allocation of risk to the Preferred Service Tenderer, if appointed to act as a service provider of the applicable Market Tested Service,

shall not be materially greater than such allocation to the service provider of such Market Tested Service whom the Preferred Service Tenderer is to replace.

- (e) The HMQ Facilities Management Requirements, Service Tender Requirements and form of contracts set out in the Market Testing Proposal shall be used for the Market Testing.

#### 50.4 Selection of Service Tenderers

- (a) Project Co shall be responsible for compiling the list of Prospective Service Tenderers. The Prospective Service Tenderers shall only include persons who HMQ consents to in writing, such consent not to be unreasonably withheld or delayed, provided however that the requirements of Article 9 (Subcontracting) apply in respect thereof. The Prospective Service Tenderers shall not include any Restricted Person or other person who is not permitted to be a Subcontractor pursuant to this Agreement. If HMQ recommends any Prospective Service Tenderers, then Project Co shall include any such recommendations in the list of Prospective Service Tenderers.
- (b) Project Co, in consultation with HMQ, shall be responsible for selecting the Service Tenderers from the list of Prospective Service Tenderers on the basis of relevant criteria, including without limitation:
  - (i) the financial standing of the Prospective Service Tenderers;
  - (ii) the technical, managerial and other relevant experience and ability of the Prospective Service Tenderers, taking into account any relevant customer references; and
  - (iii) any other basis or Service Tender Requirements identified pursuant to Sections 50.1(c)(iv) or 50.1(c)(v) of this Agreement.

All such relevant criteria shall be subject to the prior written approval of HMQ, not to be unreasonably withheld.

- (c) HMQ shall have the right to object to the selection of, and Project Co shall not select, any person as a Prospective Service Tenderer if such person does not, or could not reasonably be considered to, comply with and meet any of the criteria referred to in Section 50.4(b) of this Agreement, or with the requirements of Article 9 (Subcontracting) or if such Prospective Service Tenderer has committed a Prohibited Act. HMQ's written consent to the Prospective Service Tenderers shall be deemed to be consent provided for purposes of Article 9 (Subcontracting). HMQ shall, in its absolute discretion, have the right to reject and veto the selection of any person as a Service Tenderer on the grounds that the Prospective Service Tender has committed a Prohibited Act, where the term "Prohibited Act" shall have the extended meaning given in Section 50.14.
- (d) A person shall not be disqualified from selection as a Service Tenderer merely by virtue of being a party to one or more of the Project Documents, subject to:

- (i) compliance with all Applicable Laws; and
  - (ii) the establishment of, and compliance with, arrangements reasonably satisfactory to HMQ to avoid any conflict of interest or unfair advantage, provided however that failure by Project Co to comply with any such arrangements shall automatically lead to the disqualification of such person.
- (e) Where in respect of any Market Tested Service or group of Market Tested Services or any part of any Market Tested Service there is only one Prospective Service Tenderer (which such Prospective Service Tenderer has been approved by HMQ) or Project Co intends to select only one of the Prospective Service Tenderers as Service Tenderer (which such Prospective Service Tenderer has been approved by HMQ), then Project Co will provide notice thereof to HMQ and the following shall apply:
- (i) Project Co and HMQ will discuss and consider whether the Market Testing conducted for the relevant Market Tested Services was adequate or whether such Market Testing should be re-performed on a broader or other basis.
  - (ii) If Project Co and HMQ conclude that such Market Testing was adequate, or if such Market Testing is re-performed and there is still only one Prospective Service Tenderer or only one Prospective Service Tenderer that Project Co intends to select as Service Tenderer (which has been approved by HMQ), then Project Co shall confirm the appointment of such Service Tenderer to provide the relevant Market Tested Service. The pricing of such Market Tested Service shall be at the same pricing as prevailed before the relevant Market Testing, subject to (A) adjustment for CPI increases only over the same period, and (B) adjustment for any extraordinary additional costs incurred since the last Market Testing or foreseeable before the next Market Testing which are identified by Project Co to the extent the same are not taken into account by (A), by price increases since the last Market Testing, or by any other price variation mechanism under this Agreement, such additional costs to be approved by HMQ acting reasonably. Such pricing so adjusted shall continue until the next scheduled Market Testing hereunder.

#### 50.5 Service Tendering Process

- (a) Project Co shall be responsible for managing and co-ordinating the Market Testing in an efficient and fair manner in accordance with the Market Testing Proposal (and in particular, but without limitation, the Service Tender Requirements) and shall ensure that only Service Tenderers selected in accordance with this Article 50 are invited to submit tenders. Project Co shall ensure that the principle of equality of information to, and treatment of, Service Tenderers shall apply at all times.

- (b) HMQ may, at its own cost, appoint a monitor for the purpose of monitoring and reporting to HMQ on Project Co's compliance with all requirements for Market Testing. Such monitor shall be entitled to attend all meetings and processes relating to Market Testing, including without limitation, evaluation meetings and processes, inspecting copies of all the tender documentation, bids and evaluation documentation and comment (on behalf of HMQ) to Project Co as to compliance with the requirements for Market Testing.
- (c) In the event that Project Co does not comply with all requirements for Market Testing, then, without limiting any other remedies of HMQ under this Agreement or otherwise, Project Co shall re-perform the relevant Market Testing in accordance with such requirements.
- (d) Project Co shall send all necessary documents and information to Service Tenderers (including, without limitation, the Service Tender Requirements) in a timely manner.

#### 50.6 Preferred Service Tenderers

- (a) Following expiry of the Service Tender Validity Period, Project Co shall, subject to the provisions of this Section 50.6, determine which Service Tenderer (the "**Preferred Service Tenderer**") offers the Qualifying Service Tender in respect of any Market Tested Service, group of Market Tested Services or individual part of any Market Tested Service, that represents, as the case may be, the best value for money for HMQ.
- (b) Immediately upon making the aforesaid determination of the Preferred Service Tenderer, Project Co shall supply to HMQ a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation to enable HMQ to analyze and understand the basis for Project Co's determination.
- (c) If HMQ does not agree with Project Co's determination in the case of any Qualifying Service Tender, HMQ may, within thirty (30) days of being provided with the tender evaluation, dispute such determination and, if Project Co and HMQ do not resolve such Dispute within a further thirty (30) days, the Dispute shall be referred for resolution in accordance with Dispute Resolution Procedure.

#### 50.7 Appointment

- (a) On or about each Review Date, Project Co shall ensure that all Preferred Service Tenderers, as agreed or determined in accordance with Section 50.6 of this Agreement, are appointed to provide and enter into contracts to provide the relevant Market Tested Service or group of Market Tested Services or individual parts of any Market Tested Service, as the case may be, for five (5) year terms and on the basis set out in their Qualifying Service Tender.
- (b) Without prejudice to Section 50.3(e), where Project Co believes that only one Qualifying Service Tender is likely to be submitted, or where only one Qualifying

Service Tender is in fact submitted, provided that HMQ has consented to the Prospective Service Tenderer which submitted the Qualifying Tender, then Project Co will provide notice thereof to HMQ and the following shall apply:

- (i) Project Co and HMQ will discuss and consider whether the Market Testing conducted for the relevant Market Tested Services was adequate or whether such Market Testing should be re-performed on a broader or other basis; and
- (ii) If Project Co and HMQ conclude that such Market Testing was adequate, or if such Market Testing is re-performed and there is still only one Qualifying Service Tender likely to be or in fact submitted, then Project Co shall confirm the appointment of such Qualifying Service Tender (which has been approved by HMQ) to provide the relevant Market Tested Service. The pricing of such Market Tested Service shall be at the same pricing as prevailed before the relevant Market Testing, subject to (A) adjustment for CPI increases only over the same period, and (B) adjustment for any extraordinary additional costs incurred since the last Market Testing or foreseeable before the next Market Testing which are identified by Project Co to the extent the same are not taken into account by (A), by price increases since the last Market Testing, or by any other price variation mechanism under this Agreement, such additional costs to be approved by HMQ acting reasonably. Such pricing so adjusted shall continue until the next scheduled Market Testing hereunder.
- (c) Project Co shall, after consultation with HMQ, provide any Service Tenderer which is unsuccessful in being selected as a Preferred Service Tenderer with an appropriate explanation of the reasons behind its non-selection, if so requested.

#### 50.8 Information Requirements

- (a) Without prejudice to any of Project Co's general obligations under this Agreement, Project Co shall:
  - (i) maintain a full record and audit trail of each Market Testing and make all such records, including details of all tenders received, available for inspection by HMQ, HMQ's Representative and other authorized representatives on reasonable notice from HMQ;
  - (ii) provide to HMQ, in a comprehensive and accurate manner, all information necessary to enable HMQ to review and assess all matters relating to the Market Testing; and
  - (iii) certify to HMQ within thirty (30) days of expiry of the Service Tender Validity Period that there has been full compliance with all requirements relating to ensuring equality of information provided to, and treatment of, Service Tenderers.

#### 50.9 Subcontracts

Project Co shall ensure that all of its Subcontracts with respect to services that are Market Tested Services, are consistent with Project Co's obligations with respect to Market Testing and Subcontracts and Project Co shall not enter into any Subcontract that does not provide for termination on the applicable Review Date and appropriate transition arrangements to any replacement Subcontractor, without any compensation to the departing Subcontractor in the event termination is required as the result of the Benchmarking Exercise or Market Testing.

#### 50.10 Dispute Notice

HMQ may by notice to Project Co served within thirty (30) days of receipt of the market testing report pursuant to Section 50.5(a), dispute the required adjustment to the price payable for Market Tested Services, and if such adjustment has not been agreed or determined on or before the date four (4) months prior to the Review Date then either party may refer the matter to the Dispute Resolution Procedure.

#### 50.11 Costs of Market Testing

All costs in connection with Market Testing (including, without limitation, all out-of-pocket costs, fees and expenses) shall be borne by Project Co in the case where such activities are initiated by Project Co and by HMQ in the case where such activities are initiated by HMQ.

#### 50.12 Service Payment Adjustment

- (a) On the appointment of any Preferred Service Tenderer, the Annual Service Payment and the Monthly Service Payments shall be altered in accordance with **Schedule F (Payment Mechanism)**.
- (b) Any alteration to the Annual Service Payment and Monthly Service Payments shall take effect, in the case of Market Tested Services (other than those subject to a Benchmarking Exercise), on the later of the Review Date to which the Market Testing related and the date on which the Preferred Service Tenderer begins to perform the relevant Market Testing Service.

#### 50.13 Indemnities

Project Co shall indemnify and keep HMQ fully indemnified at all times for and against all claims, demands or notices which may be brought or alleged or threatened against either or both of them from and against all Direct Losses or fines which either or both of them may suffer or incur in relation to any such claims, demands or notices which occur as a result of or in connection with (a) the implementation of the procedures described in this Article 50; (b) any breach of the provisions of this Article 50; and (c) any claim made by any person (including Prospective Service Tenderers, Service Tenderers or Preferred Service Tenderers) that is not awarded a contract to perform the relevant Market Tested Services, in each case, save to the extent that any such breach or claim results from any failure of HMQ to comply with the express provisions of this Article 50.

50.14 Irregularity in Award of Contracts

- (a) Where Project Co carries out Market Testing, for the purpose of this Article 50 and Article 34 (Prohibited Acts) of this Agreement, the following shall extend the definition of “Prohibited Act”:
- (i) all references to “HMQ” in such definition shall be deemed to be references to “Project Co or HMQ”;
  - (ii) all reference to “Project Co” in such definition shall be deemed to be references to “Project Co or the Prospective Service Tenderer”; and
  - (iii) it shall be an additional Prohibited Act for Project Co or any Affiliated Person, or anyone acting on its or their behalf, to:
    - (A) accept or agree to accept any gift or consideration of any kind as an inducement or reward:
      - (I) for doing or not doing, or having done or not having done, any act in relation to the obtaining or performance of the Operating Subcontract or other Subcontract; or
      - (II) for showing or not showing favour or disfavour to any person in relation to the Operating Subcontract or other Subcontract; or
    - (B) enter into any Operating Subcontract or other Subcontract for Market Tested Services in connection with which a commission or fee has been paid or has been agreed to be paid to Project Co or HMQ or any public body or to any person employed by or on behalf of Project Co or HMQ or any public body, or to any family member of such person, unless before the Subcontract is made, particulars of any such commission or fee have been disclosed in writing to Project Co and HMQ and HMQ has consented to the same, in HMQ’s absolute discretion,

and the provisions of the definition of “Prohibited Act” in this Agreement and Article 34 (Prohibited Acts) shall be deemed to be modified accordingly and to apply and be construed accordingly. For greater certainty, the provisions of Section 34.6 shall apply such that nothing in this Section 50.14 shall prevent any 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.

- (b) In addition, where Project Co carries out Market Testing and any Prospective Service Tenderer or Service Tenderer (or anyone acting on its or their behalf or any of its or their directors, officers or employees) offers or agrees to give to Project Co or any Affiliated Person any gift or consideration of any kind as inducement or reward contrary to Section 50.14(a)(iii):



- (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of the Operating Subcontract or other Subcontract; or
- (ii) for showing or not showing favour or disfavour to any person in relation to the Operating Subcontract or Subcontract,

HMQ may (without prejudice to any of its rights) by notice to Project Co require Project Co to secure, as soon as practicable, the termination of that person's involvement in the Market Testing or, if discovered after the award of the relevant contract, the termination of the relevant Operating Subcontract or other Subcontract (and the provisions of Article 34 (Prohibited Acts) shall apply and be construed accordingly).

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

## **ARTICLE 51 GENERAL PROVISIONS**

### 51.1 Waiver

No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### 51.2 No Deemed Waiver

No failure or delay in the exercise or non-exercise by any Province Person or by Project Co of any of its rights or remedies under or in connection with this Agreement nor anything said, done or written by any person, or anything omitted to be said, done or written by any person including any servant or agent of HMQ or Project Co shall in any way affect the rights of HMQ, modify, affect, reduce or extinguish the obligations and liabilities of Project Co or HMQ (as the case may be) under this Agreement, or be deemed to be a waiver or release of any of the rights or remedies of HMQ or of Project Co.

### 51.3 Partial Exercise

No single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

### 51.4 Interest on Late Payments

Save as expressly provided otherwise, the parties will pay interest on any amount payable under this Agreement not paid on the due date, from the period from and including that date to but excluding the date of payment at a rate equal to the Default Interest Rate.

#### 51.5 Time Limits

Where in this Agreement any obligation of a party is to be performed in a specified time limit that obligation shall be deemed to continue after that time limit if the party fails to comply with that obligation within the time limit.

#### 51.6 Waivers in Writing

Any waiver or release of any right or remedy of HMQ or of Project Co must be specifically granted in writing signed by the party giving the waiver or release and shall:

- (a) be confined to the specific circumstances in which it is given;
- (b) not affect any other enforcement of the same or any other right; and
- (c) (unless it is expressed to be irrevocable) be revocable at any time in writing.

#### 51.7 Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.

#### 51.8 Entire Agreement

This Agreement and the Project Documents to which both HMQ and Project Co are parties represent the entire agreement between the parties hereto in relation to the subject matter of this Agreement and supersedes any previous agreement, communications, negotiations and understandings whether written or oral between the parties hereto in relation to such subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form part of this Agreement and shall be extinguished including, without limitation, the RFP.

#### 51.9 Rights Of Third Parties

It is hereby agreed and declared that a person who is not a party to this Agreement shall not be entitled in his own right to enforce any term of this Agreement.

#### 51.10 Amendments In Writing

No variation to this Agreement (other than pursuant to an express provision of this Agreement) shall be effective unless in writing and signed by the duly authorised representatives of the parties.

51.11 No Disclosure

- (a) Unless otherwise permitted pursuant to this Agreement or unless otherwise required by Applicable Law (but only to that extent), neither Project Co nor HMQ shall use the other one's name or refer to the other one 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 Agreement, or any matter related thereto, without the prior written consent of the other party, not to be unreasonably withheld or delayed.
- (b) Project Co shall not 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) that relates to the Project, this Agreement, the Courthouse Activities, or any matters related thereto, without the prior written consent of HMQ.
- (c) Without limiting the generality of Sections 51.11(a) and 51.11(b), any such approved media release, public announcement or public disclosure by Project Co shall comply at all times with HMQ's media release protocols or guidelines, as such protocols and/or guidelines are updated by HMQ from time to time. Project Co shall, and shall ensure that all Subcontractors, Special Projects Subcontractors and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with HMQ's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by HMQ from time to time.
- (d) Any publicity or publications related to this Agreement, or the Project, shall be subject to the written approval of HMQ, which may be given or withheld at HMQ's sole discretion.
- (e) Project Co shall provide to HMQ an advance copy of any advertising or other promotional material when requesting approval of HMQ under subsection 46.13(d), that copy to be provided two (2) weeks in advance of its intended use or first use date to allow the HMQ to carry out a reasonable review of that material.
- (f) Project Co shall provide advance notice to HMQ of any publicity-related events pertaining to this Agreement or to the Project prior to such publicity events occurring. The notice shall include the date, time and place of the event, and a general description of the nature of the event.
- (g) Project Co shall not make use of its association with HMQ for promotional purposes without the prior written consent of HMQ. Without limiting the foregoing, Project Co shall not directly or indirectly in any advertising or other promotional material (including any prospectus, annual report or information circular) state or imply that the award of this Agreement constitutes an endorsement by HMQ, MAG or any other government agency of its products, services, financial integrity or business reputation.

- (h) Project Co shall not directly or indirectly communicate with the media in relation at any time to the Agreement, the performance of its obligations under the Agreement, or any incident arising during the course of the fulfilling its obligations, unless it has first received HMQ's express written permission to do so.

#### 51.12 No Agency

- (a) HMQ and Project Co are independent contractors. This Agreement is not intended to and does not create or establish between HMQ and Project Co any relationship as partners, joint venturers, employee and employer, or (except as expressly provided in this Agreement) principal and agent. In furtherance of this understanding, HMQ and Project Co agree that:
  - (i) except as expressly provided in this Agreement, neither HMQ nor Project Co shall be, or be deemed to be, an agent of the other, and neither HMQ nor Project Co shall have authority hereunder to represent that it 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 implied, on behalf of or binding, or purportedly binding, upon the other party;
  - (ii) neither HMQ nor Project Co shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workplace Safety and Insurance Board premiums, Workers' Compensation payments, or other similar levies with respect to any persons employed or engaged by the other party;
  - (iii) except as otherwise expressly provided in this Agreement, each of HMQ and Project Co shall at all times, be free from the control of the other party as to the manner in which it shall perform its obligations, or cause same, under this Agreement; and
  - (iv) any person which either HMQ or Project Co may engage as an agent, employee, sub-contractor or otherwise, to perform such party's obligations under this Agreement, as permitted hereby, shall unless HMQ and Project Co 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.

#### 51.13 Remedies

- (a) Notwithstanding anything contained otherwise in this Agreement, in the event that there is a failure to provide or ensure the provision of the Service Period Works in accordance with this Agreement and such failure constitutes a Failure Event to which the provisions of **Schedule F (Payment Mechanism)** expressly apply, HMQ's remedies in respect of any reduction in the level of the Service Period Works or the Unavailability of any part of the Project Facilities caused by such failure shall be limited to those granted pursuant to **Schedule F (Payment**

**Mechanism)** and such other relevant provisions of this Agreement as expressly govern the direct or indirect consequences of such failures (including, but not limited to, those governing Project Co Default) and shall not extend to remedies available pursuant to general law.

- (b) Nothing in this Section shall prevent or restrict the right of HMQ to seek injunctive relief or a decree of specific performance.

#### 51.14 Survival

Except as otherwise provided in this Agreement, termination of this Agreement shall be without prejudice to, and shall not affect (i) the representations, warranties and indemnities under this Agreement; and (ii) any other provisions of this Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or relate to such termination or the consequences of such termination all of which shall survive termination of this Agreement, including as the result of termination on the Expiry Date.

#### 51.15 General Duty to Mitigate

HMQ and Project Co shall at all times take all 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 Agreement.

#### 51.16 Consent To Use Of English Language

HMQ and Project Co specify that it is their express wish that this Agreement and other related documents be drawn up and executed in English. HMQ et Project Co signant cette convention reconnaissent qu'elles ont exigées que cette convention de même que tous les autres documents s'y rapportant soient rédigés et exécutés en langue anglaise.

#### 51.17 Governing Law And Jurisdiction

- (a) This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement shall be governed by and construed in accordance with the laws of the Province 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; and
- (b) HMQ and Project Co hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

#### 51.18 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

51.19 Notices

Any notice, notification or other communication under or in connection with this Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provisions of this Agreement) and shall be delivered by hand or recorded delivery or sent by prepaid first class post or by facsimile to the relevant parties at the relevant address for service set out below, or to such other address in Ontario as each party may specify by notice in writing to the other.

Party: Project Co  
Address: 79 Wellington Street West  
Suite 1500  
Maritime Life Tower, P.O. Box 114  
Toronto-Dominion Centre  
Toronto, ON M5K 1G8

Attention: President

Fax: [REDACTED]

with a copy to:

Babcock & Brown LP  
2 Harrison Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105

Attention: Treasurer

Fax: [REDACTED]

Party: HMQ  
c/o Ontario Infrastructure Projects Corporation

Address: 777 Bay Street, 9<sup>th</sup> Floor  
Toronto, ON M5G 2C8

Attention: [REDACTED]

Fax: [REDACTED]

Any Notice:

- (a) if validly delivered, will be deemed to have been given when delivered (provided that such notice is received by the contact person noted above or such other person notified from time to time in substitution of such person or a person authorized on their behalf);
- (b) if validly transmitted by facsimile transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day;

- (c) if validly transmitted by facsimile transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

IN WITNESS whereof this Agreement has been duly executed.

**ONTARIO INFRASTRUCTURE  
PROJECTS CORPORATION, as agent for  
HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**ACCESS JUSTICE DURHAM LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_



**SCHEDULE A**  
**(PART I)**

**SITE DESCRIPTION**

Part of Lots 2, 3, 4, 5, 6, 7, 8 and 9, Registered Plan 121, Part of Lots C-11 and C-12, Sheet 6 and Part of Lot C-36, Sheet 8, Registered Plan 335, City of Oshawa, Regional Municipality of Durham, designated as Parts 1, 2 and 3, Plan 40R-24481.

Together with an easement as provided in Instrument number DR584511.

**SCHEDULE A  
(PART II)**

**FORM OF SUBLEASE**

**SUBLEASE**

**BETWEEN:**

**ONTARIO INFRASTRUCTURE PROJECTS  
CORPORATION, AS AGENT FOR HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO**

**(LANDLORD)**

**- and -**

**ACCESS JUSTICE DURHAM LTD.**

**(TENANT)**

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THIS SUBLEASE is dated the 1<sup>st</sup> day of March, 2007.

B E T W E E N:

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, AS  
AGENT FOR HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**

(the "Landlord")

- and -

**ACCESS JUSTICE DURHAM LTD.**

(the "Tenant")

#### **ARTICLE I – RECITALS**

- (A) The Landlord is the lessee of the lands described in Schedule "A" hereto (the "**Site**").
- (B) The Landlord and Tenant have entered into a certain project agreement dated as of the date hereof, providing for the design, construction and facilities management of the Durham Consolidated Courthouse on the Site (the "**Project Agreement**").
- (C) Pursuant to the Project Agreement the Landlord has agreed to sublease the Site to the Tenant.

NOW THEREFORE THIS INDENTURE WITNESSETH THAT in consider of the covenants and agreements hereinafter reserved and contained the parties covenant and agree with each other as follows:

#### **ARTICLE II – DEFINITIONS**

The parties hereto agree that, when used in this Sublease, unless the context otherwise requires, or unless specifically defined in this Sublease, capitalized terms used in this Sublease shall have the meaning ascribed to them in the Project Agreement.

The parties hereto agree that when used in this Sublease the following words or expressions, when capitalized shall have the meaning hereinafter set forth.

**"Commencement Date"** means the Effective Date subject to the terms contained in Section 3.1 hereof.

**"Lease Transfer"** means any assignment, subletting or charging (by way of mortgage or debenture) of this Sublease or any subletting of the whole or any part of the Leased Premises, or the entry into of any other transaction by which any right of use or occupancy of the Leased Premises is conferred upon any person (the "**Transferee**") other than the Tenant.

**"Leased Premises"** means the Site and does not include the Project Facilities.

**"Leasehold Mortgage"** means any and all mortgages, charges, debentures, security agreements, trust deeds, hypothecs or like instruments resulting from financing, refinancing or collateral financing (including renewals or extensions thereof) made or arranged by the Tenant of its leasehold interest in the Leased Premises.

**"Leasehold Mortgagee"** means the holder of, or secured party under, any Leasehold Mortgage and includes any trustee for a Leasehold Mortgagee.

**"Project Agreement"** means the project agreement described in Recital (B) to this Sublease and includes all amendments, revisions, restatements, renewals, extensions, replacements and supplements from time to time.

**"Rent"** means the rent payable by the Tenant pursuant to and in the manner set out in Section 4.2 hereof.

**"Reserved Rights"** means the right, interest and entitlement of the Landlord and other persons authorized by the Landlord at all times to have possession and use of the Site and the Project Facilities for all purposes contemplated by, or as provided for in, the Project Agreement.

**"Site"** means those lands described in Schedule "A" attached to this Sublease.

**"Term"** means that period of time referred to and described in Section 3.1.

### **ARTICLE III – GRANT AND TERM**

#### **3.1 Grant of Leased Premises and Term**

In consideration of the rents, covenants and agreements herein contained on the part of the Tenant, the Landlord hereby subleases and sub-demises to the Tenant, and the Tenant hereby subleases from the Landlord, the Leased Premises from and during the period from the Commencement Date to the earlier to occur of:

- (a) the date that is the Expiry Date; or
- (b) the Termination Date,

reserving unto the Landlord, its successors and assigns, the Reserved Rights.

#### **3.2 Tenant to Have and To Hold the Leased Premises**

The Tenant shall, subject to the terms of this Sublease, have and hold the Leased Premises, subject to the Reserved Rights, during the Term, subject to the payment of Rent and the observance and performance of the terms, covenants and conditions contained in this Sublease.

#### **3.3 Acceptance of the Leased Premises**

Subject to the provisions of the Project Agreement with respect to the environmental condition of the Site prior to the Commencement Date, the Tenant hereby acknowledges and agrees that it shall and does hereby accept the Site in its current condition as of the Commencement Date. The

Tenant hereby acknowledges and agrees that the Landlord shall not be responsible for any maintenance, repairs, repayments, alterations, improvements or the condition of the Site or the Leased Premises, except as otherwise provided in the Project Agreement.

#### **3.4 Sublease Shall be Net and Care Free**

Except where costs are expressly set out herein or in the Project Agreement, the intent of this Sublease is that it be entirely net and care free to the Landlord, and the parties agree to so construe it. The Landlord shall have no obligation to the Tenant in respect of the demise of the Leased Premises pursuant to this Sublease except as set forth herein or as expressly set out in the Project Agreement.

#### **3.5 Ownership of Project Facilities**

Notwithstanding any presumption or rule of law to the contrary, and notwithstanding the degree of annexation on or to the Site, ownership of the Project Facilities shall be vested in Project Co throughout the Term in accordance with the provisions of the Project Agreement but shall vest in the Landlord at the expiration or other termination of the Term.

### **ARTICLE IV – RENT**

#### **4.1 Covenant to Pay**

The Tenant shall pay Rent as herein provided.

#### **4.2 Rent**

The Tenant shall pay on the Commencement Date to the Landlord, at the office of the Landlord or at such other place designated by the Landlord, in lawful money of Canada, as Rent for the entire Term, the sum of \$[REDACTED], the receipt and sufficiency of which is hereby acknowledged by the Landlord.

### **ARTICLE V – USE OF THE LEASED PREMISES**

#### **5.1 Use of the Leased Premises**

The Tenant will have the right to use the Leased Premises only for Project Operations and for the other uses permitted pursuant to Section 13.13 of the Project Agreement, including the construction, commissioning, operation, maintenance and decommissioning of the Project Facilities or for any other purpose permitted to the Tenant under the terms of the Project Agreement, but for no other purposes.

#### **5.2 Observance of Law**

The Tenant shall comply with and abide by:

- (a) all provisions and other requirements under Applicable Law of all Governmental Authorities which pertain to or affect the Leased Premises;

- (b) its obligations hereunder and under the Project Agreement in accordance with their respective terms and the requirements of all Applicable Law; and
- (c) the requirements of all policies of insurance (and the insurers of such policies) from time to time in force with respect to the Leased Premises and in respect of activities on the Site, all in accordance with the Project Agreement.

### **5.3 Waiver of Rights**

The Tenant covenants and agrees that, to the extent permitted by law, it waives any rights it may have under any legal or equitable rule of law or under the applicable landlord tenant law of the Province of Ontario, as amended from time to time, or any other applicable law, to apply to a court or otherwise to elect to (i) retain the unexpired Term; and/or (ii) otherwise remain in possession of any portion of the Leased Premises, in any case where the Project Agreement expires or is terminated, surrendered or otherwise cancelled including, without limitation, a disclaimer of the Project Agreement by a trustee in bankruptcy of the Tenant, or any repudiation of the Project Agreement by the Tenant pursuant to bankruptcy or insolvency legislation or otherwise howsoever.

## **ARTICLE VI – ASSIGNMENT AND SUBLETTING**

### **6.1 Transfers**

Subject to Sections 6.2 and 9.15 herein and Section 13.11 of the Project Agreement, the Tenant will not effect or permit a Lease Transfer without the prior written consent of the Landlord unless the transferee is (i) a permitted assignee of the Tenant under the Project Agreement; or (ii) a person who has been approved by HMQ to be a "Suitable Substitute" in accordance with the terms of the Lenders' Direct Agreement or other transferee permitted under the Lenders' Direct Agreement. The Tenant covenants with the Landlord to enforce against any Transferee of the Site, for the benefit of the Landlord, the obligations of such Transferee under the relevant Lease Transfer.

### **6.2 Mortgaging of Leasehold Interest**

The Tenant shall not be entitled to grant Leasehold Mortgages to any person other than to the Senior Lenders as may be permitted in accordance with the Project Agreement and the Lenders' Direct Agreement.

### **6.3 Assignment by Landlord**

The provisions of Section 41.2 of the Project Agreement will govern with respect to the assignment, sublease or other disposition by the Landlord of its interest in and to this Sublease.

## **ARTICLE VII – POSSESSION AND USE OF FACILITIES BY LANDLORD**

### **7.1 Rights of Landlord**

Notwithstanding anything to the contrary contained in this Sublease, the Landlord shall be entitled to possess and use the Project Facilities in accordance with and subject to the terms of the Project Agreement and nothing contained herein shall restrict or limit the Reserved Rights.

## **ARTICLE VIII – DEFAULT**

### **8.1 Right to Re-enter**

- (a) An "Event of Default" occurs whenever:
  - (i) any Rent is not paid (when due and payable) on the day on which such payment is due;
  - (ii) the occurrence of a Project Co Default under the Project Agreement; or
  - (iii) a breach of any covenant or condition of this Sublease (other than those referred to in Subsection 8.1(a)(i) or (ii) above), to be observed or performed by the Tenant occurs and the breach is not remedied within fifteen (15) days after receipt by the Tenant of written notice specifying the particulars of the breach and requiring the breach to be remedied.
- (b) In accordance with and subject to the terms of the Project Agreement and the Lenders' Direct Agreement, upon the occurrence of an Event of Default the Landlord may re-enter and repossess the Leased Premises, and, on such a re-entry, this Sublease and all of the Tenant's rights hereunder may be terminated by the Landlord without liability on the part of the Landlord for loss or damage, and without prejudice to the Landlord's rights to recover or damages for any previous breach by the Tenant of any covenant or condition of this Sublease. On such a termination, (1) the Tenant will promptly (and, in any case, within thirty (30) days after written notice requiring it to do so) remove all of its property from the Leased Premises, or (2) the Landlord may at any time remove all or part of the property from the Leased Premises and store it in a public warehouse or elsewhere at the cost of the Tenant. If the Tenant fails to remove its property as required by clause (1) above, or if it fails to pay the Landlord's costs of removal and storage within thirty (30) days after written notice specifying those costs, the Tenant will be considered to have abandoned its property and the Landlord will be entitled to retain it or to sell or dispose of the Tenant's property for the Landlord's own benefit. Notwithstanding any such termination, the Landlord shall be entitled to recover damages from the Tenant, including, but not limited to, (A) the cost of recovering the Leased Premises and repairing the Leased Premises in order to facilitate a re-letting; and (B) reasonable solicitor's fees on a substantial indemnity basis. Notwithstanding the foregoing, the Landlord shall not have any right to terminate this Sublease at any time prior to exercising its right to terminate the Project Agreement in accordance with its terms and the terms of the Lenders' Direct Agreement.



## 8.2 Right to Terminate or Relet

- (a) If the Landlord elects to re-enter the Leased Premises under Section 8.1, or if it takes exclusive possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may, subject to the terms of the Project Agreement and the Lenders' Direct Agreement, either terminate this Sublease or it may from time to time, without terminating this Sublease, make such alterations and repairs as are necessary in order to relet and/or assign all or any part of the Leased Premises for such term or terms (which may be for a term extending beyond the Term) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion considers advisable. Upon each such reletting, all Rent received by the Landlord from such reletting shall be applied, first to the payment of any amount due by the Tenant under this Sublease other than Rent; and second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable solicitor's fees (on a solicitor and client basis) and the costs of such alterations and repairs. No re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Sublease, unless a written notice of such intention is given to the Tenant. If the Landlord relets without terminating, the Landlord may, at any time thereafter, elect to terminate this Sublease for the previous Event of Default. Notwithstanding the foregoing, the Landlord shall not have any right to terminate this Sublease at any time prior to exercising its right to terminate the Project Agreement in accordance with its terms and the terms of the Lenders' Direct Agreement.
- (b) In addition, if an Event of Default occurs, the Landlord may, instead of terminating this Sublease, insist on the performance of the covenants and conditions of this Sublease, and in that case, may take legal proceedings against the Tenant for performance of the covenants and conditions of this Sublease; all without prejudice, however, to the Landlord's right to terminate this Sublease at any time should the Event of Default continue unremedied.

## 8.3 Tenant May Not Terminate

Notwithstanding any statutory or other right to the contrary in effect, the Tenant will have no right to terminate this Sublease prior to its expiry, except as may be provided in the Project Agreement.

## 8.4 Remedies Generally

Mention in this Sublease of any particular remedy of the Landlord or the Tenant in respect of the default by the other does not preclude the Landlord or except as otherwise expressly set out herein, the Tenant, as the case may be, from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Sublease. Unless otherwise expressly set out herein, no remedy shall be exclusive or dependent upon any other remedy, but the Landlord or the Tenant, as the case may be, may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.

## ARTICLE IX – MISCELLANEOUS

### 9.1 Intent and Interpretation

(a) Obligations as Covenants

Each obligation or agreement of the Landlord or the Tenant expressed in this Sublease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

(b) Captions and Section Numbers

The captions, section numbers, article numbers, and Table of Contents appearing in this Sublease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Sublease nor in any way affect this Sublease.

(c) Extended Meanings

The words "hereof", "herein", "hereunder" and similar expressions used in any Section or subsection of this Sublease relate to the whole of this Sublease and not to that Section or subsection only, unless otherwise expressly provided. The use of the neuter singular pronoun to refer to the Landlord or the Tenant is deemed a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Sublease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

(d) Partial Invalidity

If, for any reason whatsoever, any term, covenant or condition of this Sublease or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (i) is deemed to be independent of the remainder of the Sublease and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of the Sublease or any part thereof; and
- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

Neither party is obliged to enforce any term, covenant or condition of this Sublease against any person, if, or to the extent that by so doing, such party is caused to be in breach of any laws, rules, regulations or enactments from time to time in force and nothing in this Sublease entitles the Landlord to stipulate the

price or price range at which any article or service is to be supplied, offered or advertised by the Tenant.

(e) Entire Agreement

This Sublease is the entire agreement between the parties in respect of the demise of the Leased Premises and sets forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the demise of the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them in respect of the demise of the Leased Premises other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon the Landlord or the Tenant unless in writing and signed by the Tenant and by an executive officer of the Landlord.

(f) Governing Law

This Sublease shall be construed in accordance with and governed by the laws of the Province of Ontario.

(g) Time of the Essence

Time is of the essence of this Sublease and of every part hereof.

## 9.2 **Overholding - No Tacit Renewal**

If the Tenant remains in possession of the Leased Premises after the end of the Term with the consent of the Landlord, there shall be no tacit renewal of this Sublease and the Term hereby granted, notwithstanding any statutory provisions or legal presumption to the contrary, and the Tenant shall be deemed to be occupying the Leased Premises as a tenant from month to month, upon the same terms, covenants and conditions as are set forth in this Sublease (including the payment of all Rent).

The Tenant shall indemnify the Landlord and save it harmless from and against any and all losses, claims, actions, damages, liabilities, costs and expenses, including, without limitation, any reasonable legal fees (on a solicitor and own client basis) incurred as a result of the Tenant remaining in possession of all or any part of the Leased Premises after the Landlord has, following the expiry of the Term, provided the Tenant with reasonable notice to vacate same. Nothing contained in this Section 9.2 shall preclude the Landlord from taking action for recovery of possession of the Leased Premises.

## 9.3 **Successors**

All rights and liabilities herein granted to, or imposed upon the respective parties hereto, extend to and bind the permitted successors and assigns of the Landlord and the permitted successors and assigns of the Tenant, as the case may be.

#### 9.4 **Waiver**

The waiver by the Landlord or by the Tenant of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Landlord is not deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Sublease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Sublease is deemed to have been waived by the Landlord or by the Tenant, unless such waiver is in writing by the Landlord or by the Tenant, as the case may be.

#### 9.5 **No Partnership or Agency**

The Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with the Tenant, nor is the relationship of principal and agent created.

#### 9.6 **Paramountcy**

For greater certainty and the avoidance of doubt, if there is any inconsistency or conflict between any provision or provisions of this Sublease and the Project Agreement or the Lenders' Direct Agreement, the parties hereto agree that the relevant provision or provisions of the Project Agreement or the Lenders' Direct Agreement, as applicable, shall prevail. The foregoing in no way diminishes the obligations of either the Tenant or the Landlord under the Project Agreement or this Sublease.

#### 9.7 **Force Majeure**

The Project Agreement shall govern with respect to the occurrence of a Force Majeure Event.

#### 9.8 **Notices**

Any notice, demand, request or other instrument which may be or is required to be given under this Sublease shall be in writing and shall be sufficiently given if delivered by courier or facsimile and shall be addressed or sent by facsimiled (or other electronic) transmission:

- (a) if to the Landlord:

c/o Ontario Infrastructure Projects Corporation  
777 Bay Street, 9<sup>th</sup> Floor  
Toronto, ON M5G 2C8

Attention: **[REDACTED]**

Facsimile No.: **[REDACTED]**

or to such other person or at such other address or facsimile number or e-mail address as the Landlord designates by written notice; and

(b) if to the Tenant:

79 Wellington Street West  
Suite 1500  
Maritime Life Tower  
P.O. Box 114  
Toronto Dominion Centre  
Toronto, ON M5K 1G8

Attention: President

Facsimile No.: [REDACTED]

With a Copy to:

Babcock & Brown LP  
2 Harrison Street, 6th Floor  
San Francisco CA 94105

Attention: Treasurer

Facsimile No.: [REDACTED]

or to such other person or at such other address or facsimile number or e-mail address as the Tenant designates by written notice.

Any such notice, demand, request or consent is conclusively deemed to have been given or made on the day upon which such notice, demand, request or consent is delivered or, if sent by facsimile transmission, on the next business day after the date on which the notice, demand, request or consent was sent by facsimile. Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices hereunder.

## 9.9 Registration

The Tenant may register in the applicable land registry office for the Site such notices of this Sublease or of any assignment or sublease hereof as the Tenant (or the Senior Lenders) may require, all of which the Landlord will promptly execute on request. All costs, expenses and taxes necessary to register or file the application to register notice of this Sublease or of any assignment or sublease hereof shall be the sole responsibility of the Tenant.

## 9.10 Quiet Enjoyment

(a) If the Tenant pays the Rent and other amounts herein provided, and observes and performs all the terms, covenants and conditions on the Tenant's part to be observed and performed hereunder and under the Project Agreement and the Lenders' Direct Agreement, the Tenant is entitled to peaceably and quietly hold and enjoy the Leased Premises for the Term, without interruption by the Landlord or any other person lawfully claiming by, through or under the Landlord, subject,

nevertheless, to the terms, covenants and conditions of this Sublease (including, without limitation, the Reserved Rights), the Project Agreement and the Lenders' Direct Agreement.

- (b) If during the Term the Tenant is disturbed in its quiet enjoyment of the Leased Premises or any part of the Leased Premises, it will not be entitled to call upon the Landlord to defend or warrant it against such disturbance unless the disturbance is caused by any act or omission of the Landlord, its agents or employees or other persons for whom the Landlord is legally responsible, or the default of the Landlord under this Sublease or the Project Agreement. In the event of such disturbance the Tenant will, until evicted from the Leased Premises, abide by and fulfil each of its obligations under this Sublease in the same manner as if such disturbance had not taken place but will be entitled to exercise a right of set-off against the Landlord in respect of any such disturbance.
- (c) Section 9.10(b) is subject to the terms and conditions of the Project Agreement.

#### **9.11 Counterparts and Execution by Facsimile**

This Sublease and any other agreement delivered pursuant hereto may be executed in any number of counterparts with the same effect as if all parties to this Sublease or such other agreement delivered pursuant hereto had signed the same document, and all counterparts will be construed together and constitute one and the same instrument. This Sublease and any other agreement delivered pursuant hereto may be executed by facsimile ( or other electronic) transmittal facilities and the parties adopt any such signatures received thereby as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Sublease which was so executed.

#### **9.12 Schedule**

Schedule "A" attached hereto is incorporated into this Sublease and constitutes an integral part thereof.

#### **9.13 Compliance with the Planning Act**

This Sublease is subject to compliance with section 50 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended. The Landlord and Tenant agree that the exemptions relating to land or any use or right therein being acquired or disposed of by Her Majesty in Right of Ontario set out in clause 50(3)(c) of the *Planning Act* shall apply to this Sublease and the transactions provided for herein.

#### **9.14 Landlord's 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 the Landlord under this Sublease (including, without limitation, review of all documentation submitted by the Tenant to the Landlord for review, approval, comment, evaluation or otherwise engage in discussions, consultations and meetings with the Tenant, submitting notices and documentation to the Landlord, issuances of notices, documentation, and related matters) and the Tenant 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 other administrative matters and decisions determined by such designated Person from time to time, until the Crown has notified the Tenant 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 in writing of any designation hereunder. The rights and obligations of the parties to this Sublease shall be in no way affected by reason of any such designation. The Tenant acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 9.14.

IN WITNESS WHEREOF, the Landlord, and the Tenant have signed and sealed this Sublease.

SIGNED, SEALED AND DELIVERED  
in the presence of:

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION,  
as agent for HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

(I/We have authority to bind the Corporation)

**ACCESS JUSTICE DURHAM LTD.  
(Tenant)**

Per: \_\_\_\_\_  
Name:

Per: \_\_\_\_\_  
Name:  
(I/We have authority to bind the Corporation)

**Schedule "A"**

**LEGAL DESCRIPTION OF LANDS**

**COMPRISING THE SUBLEASED PREMISES**

Part of Lots 2, 3, 4, 5, 6, 7, 8 and 9, Registered Plan 121, part of Lots C-11 and C-12, Sheet 6 and part of Lot C-36, Sheet 8, Registered Plan 335, City of Oshawa, Regional Municipality of Durham, designated as Parts 1, 2 and 3, Plan 40R-24481.

Together with an easement as provided in Instrument number DR584511.



**SCHEDULE B**  
**PART I**  
**DESIGN REQUIREMENTS**

**[REDACTED]**

## **SCHEDULE B**

### **Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage**

#### **1.0 DEFINITIONS**

Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

"**Commissioning Agent**" has the meaning ascribed to it in **Schedule C (Outline Commissioning Plan)** of the Agreement.

"**Commissioning Fine Tuning Period**" means the period commencing after the Completion Date, at a time when the building can be operated under fully loaded occupancy cycles for four (4) complete seasons after the Completion Date (or such earlier time as HMQ may agree, acting reasonably) whereby Project Co verifies through various testing that all key systems in the Project Facilities, including, for certainty, heating, air conditioning, and ventilation are functioning in accordance with the HMQ Design Requirements and the HMQ Facilities Management Requirements.

"**Commissioning Stage**" means the period in which Project Co engages in Commissioning in accordance with the Project Co Commissioning Program of all or any discrete part of the Project Facilities and includes Commissioning conducted during the Commissioning Fine Tuning Period.

"**Commissioning Submissions**" means any information (in any format) and/or submissions provided in writing by Project Co to HMQ in connection with or relating to Commissioning and/or the draft Commissioning Program, including any and all revisions, re-submissions and/or amendments which may or may not be intended to solicit a response from HMQ.

"**Completion Stage**" means the period wherein work to satisfy the requirements of **Schedule D (Completion Certification)** of the Agreement is implemented.

"**Completion Submissions**" means the information (in any format) and/or submissions provided in writing by Project Co to HMQ relating to achieving Completion of the Project Facilities, including any and all revisions, re-submissions and/or amendments which may or may not be intended to solicit a response from HMQ.

"**Construction Documents Submissions**" means the information (in any format, including, for certainty, drawings and specifications and any Construction Documents Work) and/or submissions provided in writing by Project Co to HMQ which outlines Project Co's work to advance Design Development of all or a discrete part of the Project Facilities to Construction Work of all or such discrete part of the Project Facilities, including any and all revisions, re-submissions and/or amendments, which may or may not be intended to solicit a response from HMQ.

**"Construction Documents Stage"** means the period in which Project Co engages in Construction Documents Work in respect of all or a discrete part of the Project Facilities.

**"Construction Documents Work"** means Project Co's work to advance Design Development of all or a discrete part of the Project Facilities into drawings and specifications, or packages of drawings and specifications, suitable to proceed to construction of all or such discrete part of the Project Facilities, and prepared generally in accordance with RAIC Canadian Handbook of Practice for Architects (sections 2.3.7 and 2.3.8) and relevant OAA Practice bulletins and related guidelines and documents.

**"Construction Stage"** means the period in which Project Co constructs all or a discrete part of the Project Facilities in accordance with the then completed and agreed to Construction Documents Work.

**"Construction Submissions"** means the information (in any format) and/or submissions provided in writing by Project Co to HMQ relating to Construction Work of all or a discrete part of the Project Facilities, including any and all revisions, re-submissions and/or amendments which may or may not be intended to solicit a response from HMQ.

**"Construction Work"** means Project Co's work to construct all or a discrete part of the Project Facilities in accordance with the Agreement.

**"Design and Construction Submissions"** has the meaning set forth in **Schedule N (Review Procedure)** of the Agreement.

**"Design Development"** means Project Co's work to advance the design of the Project Facilities, which work shall be prepared generally in accordance with RAIC Canadian Handbook of Practice for Architects (section 2.3.6) and relevant OAA Practice bulletins and related guidelines and documents, notwithstanding that some previously prepared parts of the design may already exceed these standards and guidelines.

**"Design Development Stage"** means the period in which Project Co engages in Design Development of all or a discrete part of the Project Facilities.

**"Design Development Submissions"** means any information (in any format, including, without limitation, drawings and specifications) and/or submissions provided in writing by Project Co to HMQ in connection with or relating to Design Development of all or a discrete part of the Project Facilities, including any and all revisions, re-submissions and/or amendments which may or may not be intended to solicit a response from HMQ.

**"FF&E Consultant"** has the meaning set forth in Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)**.

**"HMQ Facilities Management Requirements"** means the facilities management specifications set forth in Part I: Facilities Management of **Schedule E (Service Period Works)** of the Agreement.

**"HMQ Project Manager"** means the project manager appointed by HMQ to be the sole representative of HMQ during all Stages of Work.

"**Life Cycle Renewal Services**" has the meaning set forth in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** of the Agreement.

"**Occupancy Plan**" means a plan prepared by Project Co identifying (i) the steps and processes to be undertaken by Project Co up to the Completion Date in order for the Project Facilities to be ready for MAG Occupants and Non-MAG Occupants to begin the move into the Project Facilities; (ii) the steps and processes to be undertaken by Project Co after the Completion Date to facilitate HMQ's move in of MAG Occupants and Non-MAG Occupants into the Project Facilities; and (iii) the steps and processes to be undertaken by both Project Co and HMQ to ensure that the Project Facilities are complete and fully functional in readiness to begin Courthouse Activities.

"**Occupancy Submissions**" means the information (in any format) and/or submissions (including, for certainty, the draft Occupancy Plan) provided in writing by Project Co to HMQ relating to the Occupancy Stage of Work and/or the draft Occupancy Plan, including any and all revisions, re-submissions, and/or amendments which may or may not be intended to solicit a response from HMQ.

"**Occupancy Stage**" means the period in which Project Co and HMQ engage in Occupancy Work.

"**Occupancy Work**" means the various activities and work undertaken by Project Co, to prepare for (i) occupancy by MAG Occupants and Non-MAG Occupants at the Project Facilities and (ii) subsequent work by HMQ and MAG to relocate MAG Occupants and Non-MAG Occupants to the Project Facilities, including their Existing FF&E and their contents of offices and storage areas into the Project Facilities from the Old Facilities in readiness to commence Courthouse Activities.

"**Police Systems Design Development Documents**" has the meaning set forth in Section 3.3(i)(p).

"**Project Co Manager**" means the project manger appointed by Project Co to be sole representative of Project Co during the Construction Documents Stage, the Construction Stage, the Commissioning Stage, the Completion Stage and the Occupancy Stage.

"**Project Works**" means the design, professional services, construction, fabrication of products, testing, commissioning and completion of the Project Facilities and related services required by the Agreement to meet the HMQ Design Requirements and to achieve Completion, including rectifying any Minor Matters, any activities to enable or facilitate the commencement of the Service Period Works, installation and procurement of FF&E in accordance with the terms of the Agreement, Design Development, Construction Documents Work, Construction Work, Commissioning (including all commissioning required to be performed during the Commissioning Fine Tuning Period and any work provided for in the Project Co Commissioning Program), Occupancy Work, any work provided for in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**, all work to be performed during the Completion Stage, set-up, mock-ups, landscaping, demolition, waste removal, offsite work and any other work required by the Agreement with respect to the Project Facilities other than the Service Period Works.

"**RFP-1**" means the request for proposals issued in connection with the Project on July 15, 2005.

"**RFP-2 Proposals**" means Project Co's proposal submitted pursuant to and in accordance with the Request for Proposals issued in connection with the Project to selected proponents on February 15, 2006 (as amended by addenda from time to time.)

"**Schematic Design Stage**" means the period in which Project Co, HMQ, MAG and the Design and Construction Compliance Consultant engage in development of the schematic design of the Project Facilities for the purpose of achieving Schematic Design Acceptance.

"**Schematic Design Submissions**" means the information and/or submissions provided in writing by Project Co to HMQ relating to the schematic design of the Project Facilities, including all revisions, re-submissions and/or amendments which may or may not be intended to solicit a response from HMQ, and includes, for certainty, the Final Schematic Design Submission.

"**Stages of Work**" means all stages of the Project Works described in this Schedule.

"**Start-Up Meeting**" has the meaning set forth in Section 3.3(i) of this Schedule.

"**Submissions**" means collectively, the Schematic Design Submissions, the Design Development Submissions, the Construction Documents Submissions, the Construction Submissions, the Commissioning Submissions, the Occupancy Submissions and the Completion Submissions, and any other submissions and/or information (in any form whatsoever) HMQ may reasonably request Project Co to deliver from time to time in order for HMQ to understand and comment on the Project Works and any other submissions delivered in respect of the agreed procedure to deal with Urgent Matters.

"**Submissions Schedule**" has the meaning set forth in Section 3.3(i)(h) of this Schedule.

"**Urgent Matters**" has the meaning set forth in Section 3.3(i)(n) of this Schedule.

## **2.0 GENERAL**

### **2.1 Purpose of this Schedule**

This Schedule describes HMQ's requirements for an orderly process of interaction between Project Co and HMQ throughout the performance of the Project Works which for clarity means from the Date of Agreement through to the end of the Commissioning Fine Tuning Period. The following general provisions apply through all Stages of Work. **Schedule N (Review Procedure)** provides for the specific procedures and timelines for review of Design and Construction Submissions and the Schematic Design Submissions (including, for certainty, the Final Schematic Design Submission). In the event of any conflict between the terms of this Schedule and the provisions of **Schedule N (Review Procedure)** in respect of the timelines for review of Design and Construction Submissions and Schematic Design Submissions, the timelines set forth in **Schedule N**

**(Review Procedure)** of the Agreement in respect of Design and Construction Submissions and Schematic Design Submissions shall govern.

### **2.1.1 Availability of Project Documents**

Project Co shall prepare and make available to HMQ all Submissions described herein which shall be considered as the minimum Submissions to be provided by Project Co to HMQ, which Submissions may be amended and/or supplemented at the Start-Up Meeting and any other Submissions HMQ may reasonably request to understand and comment on the Project Works. All Submissions will be processed for review in accordance with **Schedule N (Review Procedure)** of the Agreement. Notwithstanding anything to the contrary set forth in the Agreement, all Design and Construction Submissions and all Schematic Design Submissions prepared by, or for Project Co or HMQ during the Project Works shall be made available in the e Room for viewing by HMQ, MAG, HMQ Representatives, the HMQ Project Manager, the Design and Construction Compliance Consultant and the Independent Certifier.

### **2.1.2 Project Co Continuous Duty of Care**

Notwithstanding any action of participation, review, comments, attendance at operational demonstrations, or mock up presentations or the like by HMQ or any of its representatives, Project Co shall be responsible for meeting the HMQ Design Requirements, completing the Project Works in accordance with the terms of the Agreement and achieving Courthouse Functionality throughout the Agreement Term.

### **2.1.3 Sequence of Work**

While this Schedule describes seven discrete Stages of Work occurring in sequence along a continuum, provided that the terms and conditions set forth in the Agreement are being satisfied, the actual sequence of the Project Works will be at Project Co's sole determination. For convenience therefore, the narrative in this Schedule describes a generic sequence of activities with the understanding of, and without precluding, Project Co's right to sequence the Project Works as Project Co's sees fit.

### **2.1.4 Project Co Team**

Project Co shall at all times use only the individuals and specialists named and accepted by HMQ in the RFP-1 process in the roles described in RFP-1, or replacement individuals agreed to by HMQ, to carry out the Project Works. Where a replacement is necessary, Project Co shall provide a replacement individual(s) of equal skill and experience, acceptable to HMQ, acting reasonably. Project Co shall retain additional specialists required to complete the Project Works in the manner intended pursuant to the Agreement.

### **2.1.5 HMQ Representatives**

For purposes of its Project Works planning, Project Co may expect that individuals performing the following roles and positions will be provided via HMQ for the duration of Project Works:

- (i) HMQ – to provide executive direction and decisions;
- (ii) HMQ Project Manager – to provide day to day prime contact with Project Co, project lead for all design and construction consultation and team activities, and attendance at all Project Works meetings;
- (iii) HMQ – to provide administrative assistance to the Project Manager, and to manage discrete HMQ tasks at any Stage of Works;
- (iv) Design and Construction Compliance Consultant – to provide, among other things, general HMQ advocate architect services, lead HMQ schematic design, design and construction Submissions reviews, lead HMQ consultation with Project Co, provide HMQ compliance management and technical review until all Occupancy Work has been completed;
- (v) MAG Staff, including a MAG architect and a MAG architectural advisor – to lead MAG input to design review, input on technical issues and decisions; and continually monitor Courthouse Functionality as work progresses; and
- (vi) MAG user representatives includes selected MAG operational staff, Non-MAG Occupants and Non-MAG groups such as police, law association and agencies to provide input to MAG Staff on detailed planning issues related to MAG operational program.

### **2.1.6 LEED Documentation**

The LEED Specialist named by Project Co and accepted in the RFP-1 process shall facilitate compliance with the LEED documentation process by managing the participation of the responsible parties from Project Co in all Stages of Work, and to progressively maintain and re-verify project documentation and complete the CaGBC LEED documentation process.

### **2.1.7 Project Schedule Monitoring and Communication and Review by PMOC**

- (a) Project Co shall continually monitor the progress of the Project Works to:
  - (i) identify actual or potential circumstances that could reasonably be expected to affect achieving Completion by the Planned Completion Date; and
  - (ii) communicate the status of the Project Schedule to HMQ in the manner established in the Start-Up Meeting.
- (b) Project Co shall submit an updated Project Schedule (which Project Schedule shall include a baseline schedule and a current schedule) to PMOC for review and discussion once per calendar month until all Stages of Work are completed.

## **3.0 SCHEMATIC DESIGN STAGE AND DESIGN DEVELOPMENT STAGE**

- 3.1** Further to the requirements set forth in the Agreement, during the Schematic Design Stage and the Design Development Stage, Project Co shall and in addition to any other

requirements set forth in the Agreement, consult with HMQ and the Design and Construction and Compliance Consultant regarding development of the Interim Schematic Design in order to achieve Schematic Design Acceptance by the Schematic Design Acceptance Date and regarding design developments made in respect of the Schematic Design so as to ensure consistency with the Schematic Design.

- (a) HMQ's interest in the Design Development Stage includes, but is not necessarily limited to, Design Development related to:
  - (i) base building elements that support MAG's courts program;
  - (ii) fit-up of the base building to accommodate MAG's courts program;
  - (iii) integrated security and access control systems;
  - (iv) emergency systems;
  - (v) base building components intended to remain in service beyond the end of the Service Period;
  - (vi) selected building components that will be concealed during Construction Work; and
  - (vii) Site development.
- (b) HMQ's interest in the Schematic Design Stage includes, but is not necessarily limited to:
  - (i) development of structural, mechanical, electrical, civil security and other systems;
  - (ii) FF&E layouts for MAG Occupants and Non-MAG Occupants; and
  - (iii) user feedback on individual program elements.

### **3.2 Coordination of the Work**

Project Co's activities throughout the Schematic Design Stage and the Design Development Stage shall be lead by the Project Co Architect who, together with the Construction Subcontractor, will be Project Co's sole points of contact for HMQ for the Schematic Design Stage and the Design Development Stage issues. HMQ's activities throughout the Schematic Design Stage and the Design Development Stage will be lead by the HMQ Project Manager and the Design and Construction Compliance Consultant who will be Project Co's sole contact persons throughout the Design Development Stage.

### **3.3 Design Development Stage Process**

Project Co and its design team shall:

- (i) Attend a start up meeting (the "**Start-Up Meeting**"), which meeting is also referenced in **Schedule N (Review Procedure)** of the Agreement, with HMQ and MAG and the Independent Certifier, convened by the Design and Construction



Compliance Consultant no later than fifteen (15) days after the execution of the Agreement or at a time otherwise agreed to by HMQ and Project Co, to lay out the process for HMQ's and Project Co's involvement through all Stages of Work. The Start-Up Meeting agenda shall include, but will not be limited, to the following:

- a. The schedule of activities that Project Co intends to undertake to ensure that all Stages of Work are completed in accordance with the requirements set forth in the Agreement, provided that, Project Co and HMQ acknowledge and agree that the schedule of activities that each of Project Co, HMQ, MAG and the Design and Construction Compliance Consultant are required to undertake to ensure Schematic Design Acceptance is achieved by the Schematic Design Acceptance Date shall be the process agreed to by the Proponent, OIPC, MAG and the Design and Construction Compliance Consultant at the start-up meeting in which the parties participated in immediately after execution of the Preferred Proponent Agreement which process and schedule of activities included, for certainty (and without limitation) discussions and a schedule regarding (i) the Items of Non-Compliance with the Design Requirements (as such term is defined in the Preferred Proponent Agreement); (ii) HMQ/MAG's expectations in order to achieve Schematic Design Acceptance; (iii) a MAG user representative consultation process, acceptable to HMQ and MAG; (iv) a schematic design submission schedule outlining the requirement of Project Co to deliver periodic Schematic Design Submissions for review by HMQ, MAG and the Design and Construction Compliance Consultant; and (v) the extent of design resolution required prior to the Schematic Design Acceptance Date;
- b. An outline of the sequence of all Stages of Work;
- c. Project Co's process to ensure optimum design quality, including full courthouse design expert and sub consultant participation in Submissions;
- d. The review process agenda and process described in **Schedule N (Review Procedure)** of the Agreement;
- e. Identification of additional specialist consultants and their roles in all Stages of Work;
- f. Project Co's approach to a fully integrated interior design process that includes every element of interior finishes, FF&E, occupant signage, and way-finding, which shall be in accordance with the requirements set forth in the Agreement;
- g. A MAG user representative consultation process (other than in respect of Schematic Design Submissions or Schematic Design Acceptance), which process will set out the process for consultation relating to design, construction, occupancy and commissioning that require input from HMQ, MAG and representatives of MAG Occupants and Non-MAG Occupants,

including, without limitation, space allocation for individual users of the courthouse, space layouts, adjacencies and generic design of offices and courtrooms at the Project Facilities, as such process will be developed by HMQ, MAG, representatives of MAG Occupants and Non-MAG Occupants and Project Co and shall be acceptable to HMQ and MAG acting reasonably;

- h. A schedule outlining Project Co's approach to deliver Submissions (which shall identify grouping and volume of Submissions) as well as mock-ups for complete courtroom and public counter stations, as required to be provided pursuant to Section 4.3 of this Schedule for review by HMQ and its advisors (the "**Submissions Schedule**"). Project Co and HMQ acknowledge and agree that the submissions schedule in respect of delivery of Schematic Design Submissions and the Final Schematic Design Submission shall be consistent with the schematic design submission schedule set forth in the Project Schedule;
- i. The minimum Submission requirements for each of the Stages of Work, as set forth in Sections 3.4, 3.5, 4.4, 5.6, 6.2, 7.2 and 8.4 of this Schedule along with any additional Submissions which HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Design and Construction Compliance Consultant deems necessary to ensure that the parties understand the Project Works and in order for Project Co to achieve Schematic Design Acceptance by the Schematic Design Acceptance Date;
- j. Project Co's intended LEED integrated design process and confirmation of the LEED credit tracking process;
- k. Project Co's approach to the timing, construction, adjustment, and feedback from HMQ, MAG and representatives of MAG Occupants and Non-MAG Occupants on mock-ups;
- l. Project Co's approach to construction quality control and proposed updates to the construction quality control plan submitted with the RFP-2 Proposal in response to Project Co's selected construction approach;
- m. A communication process that includes an e Room;
- n. Discuss and agree upon (i) the events that will constitute an urgent matter (an "**Urgent Matter**") relating to all or any part of the construction of the Project Facilities; (ii) the form and content of all Submissions that will be provided by Project Co to HMQ when an Urgent Matter arises; (iii) how Project Co and HMQ intend to interact during such situation; and (iv) a mutually acceptable procedure to accommodate Urgent Matters and other unscheduled Submissions;
- o. Discuss and agree on a regime and schedule for consultations, meetings and workshops to be carried out so as to ensure that Project Co may satisfy the design, construction, commissioning and completion requirements

(including installation of New MAG FF&E and complying with the Occupancy Plan) as set forth in the Agreement (other than, for certainty, any regime and schedule for Schematic Design Submissions agreed to at the start-up meeting attended by Project Co and MAG and immediately after execution of the Preferred Proponent Agreement);

- p. Discuss (i) the documentation and specifications for rough-in of Durham Regional Police Services radio communications systems conduits at the Project Facilities prior to Completion; and (ii) the documentation and requirements of Durham Regional Police Services in respect of move-in and installation of FF&E, in each case, as such documentation, requirements and specifications will be prepared by HMQ and provided to Project Co on the date or dates agreed to by HMQ, MAG and Project Co at the Start-Up Meeting (collectively, the "**Police Systems Design Development Documents**"). For certainty, in accordance with Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**, the rough-in of Durham Regional Police radio communications systems conduits at the Project Facilities shall be completed by Project Co on or before the day that is one hundred and twenty (120) days prior to the Planned Completion Date, and as such, the Police Systems Design Development Documents shall be completed and submitted to Project Co prior to such time;
- q. Project Co's approach to continue to develop structural, mechanical, electrical, civil, security and other systems to a level of resolution commensurate with the modifications made in the Schematic Design Stage to Interim Schematic Design;
- r. Project Co's approach to continue to develop FF&E layouts for MAG Occupants and Non-MAG Occupants, showing all required FF&E items to be resolved in sufficient detail to ensure that:
  - (A) base building net areas can accommodate FF&E layouts in a manner that achieves Courthouse Functionality;
  - (B) the FF&E layouts will achieve the intent of the HMQ Design Requirements, particularly in respect of layout clarity, appropriate adjacencies, efficient primary and secondary circulation systems within enclosed areas and efficient uses of space; and
  - (C) HMQ/MAG acceptance of the FF&E layouts can be achieved.
- s. Project Co's approach to work constructively and continuously with MAG user representatives through HMQ/MAG and the Design and Construction Compliance Consultant to incorporate their feedback on individual program elements into the Interim Schematic Design and each Schematic Design Submission provided that the issues and preferences of the user representatives are (i) submitted on a timely basis in accordance with HMQ's obligations under the design schedule, and (ii) consistent with the HMQ Design Requirements. The approach to the user representatives

shall be consistent with the approach agreed to by MAG and Project Co at the start-up meeting attended by such parties prior to the Date of Agreement and immediately after execution of the Preferred Proponent Agreement.

- t. Other topics as may be required by HMQ.
- (ii) Prepare successively detailed Schematic Design Submissions that modify that portion of Project Co's RFP-2 Proposals as well as the Interim Schematic Design, for consideration by and consultation with HMQ, MAG, the Design and Construction Compliance Consultant and MAG user representatives (which includes, for certainty, representatives of MAG Occupants and Non-MAG Occupants), which Schematic Design Submissions shall be provided at the times specified in the Schematic Design Submission schedule agreed by OIPC, MAG, the Design Construction Compliance Consultant and Project Co in accordance with the Preferred Proponent Agreement unless such schedule was otherwise amended by agreement of Project Co, HMQ and MAG.
- (iii) Prepare successively detailed Design Development Stage Submissions that build upon the Schematic Design for consideration by and consultation with HMQ, MAG, the Design and Construction Compliance Consultant and MAG user representatives (which includes, for certainty, representatives of MAG Occupants and Non-MAG Occupants), which Submissions shall be provided at the times agreed by HMQ and Project Co in accordance with the Submissions Schedule;
- (iv) Prepare such other Submissions as may be identified by HMQ, the Design and Construction Compliance Consultant, MAG, MAG Occupants and/or Non-MAG Occupants as reasonably necessary in order to enable each of them to understand the Project Works or to enable Project Co to achieve Schematic Design Acceptance;
- (v) Work constructively and continuously with HMQ and MAG Staff and user representatives (including, for certainty, representatives of MAG Occupants and Non-MAG Occupants) through the Design and Construction Compliance Consultant to consider and discuss their feedback on Schematic Design Submissions and Design Development Submissions in accordance with the procedures set out for consultation as determined at the Start-Up Meeting and in accordance with the procedure agreed to prior to the Date of Agreement in accordance with the Preferred Proponent Agreement in respect of Schematic Design Submissions; and
- (vi) Continue the above sequence of submissions, consultations, selections, and revisions as required to consider and discuss issues on each phase of Schematic Design development and each phase of Design Development, before any Schematic Design Submission is made and before any Design Development Submission is made to HMQ on Construction Documents for that phase of Design Development.

### 3.4 Minimum Submissions for Review in the Schematic Design Stage.

- (i) Project Co shall provide the following Schematic Design Submissions to HMQ for review and comment in accordance with **Schedule N (Review Procedure)** of the Agreement and as may be amended by mutual agreement of Project Co and HMQ at the Start-Up Meeting:
  - a. Each of the individual components set forth in Section 3.4(ii) of this Schedule (each individual component is considered an individual Schematic Design Submission);
  - b. Schematic Design documents selected generally in accordance with 3.0 of this Schedule including:
    - (A) structural, mechanical, electrical, civil, security and other systems;
    - (B) FF&E layouts for MAG Occupants and Non-MAG Occupants, showing all required FF&E items resolved in sufficient detail to ensure that:
      - (I) base building net areas can accommodate FF&E layouts in a manner that achieves Courthouse Functionality;
      - (II) the FF&E layouts will achieve the intent of the HMQ Design Requirements, particularly in respect of layout clarity, appropriate adjacencies, efficient primary and secondary circulation systems within enclosed areas and efficient uses of space; and
      - (III) OIPC/MAG acceptance of the layouts can be achieved.
- (ii) Project Co shall provide the Final Schematic Design Submission for review and acceptance by HMQ and the Design and Construction Compliance Consultant in accordance with **Schedule N (Review Procedure)** of the Agreement which Final Schematic Design Submission shall be delivered to HMQ no later than five (5) Business Days prior to the Schematic Design Acceptance Date and shall include the following components:
  - a. Design drawings submitted by Project Co pursuant to the Preferred Proponent Agreement, which shall be modified to schematic design drawings, correcting any items of non-compliance with the HMQ Design Requirements as identified by OIPC or MAG throughout the Schematic Design Submissions process in accordance with the Agreement. This drawing submittal shall include:
    - (A) Site plan (1:500 scale);
    - (B) Floor plans at each level including basement (1:100 scale);

- (C) Roof plans (1:200 scale);
  - (D) Reflected ceiling plans (1:100 scale) of major spaces;
  - (E) Sections (1:100 scale);
  - (F) Elevations (1:100 scale);
  - (G) Two perspectives (Bond and New Streets) (610x 915mm) in colour; and
  - (H) Three interior perspectives.
- b. Written description and design summary for each building element described in the HMQ Design Requirements. The description shall confirm elements described in the RFP-2 Proposal and in the Interim Schematic Design, and describe adjustments or provide added detail for the elements.
- c.
- (A) A report confirming that the proposed building energy cost can be achieved using hourly energy simulation software in accordance with the modeling procedures discussed in the LEED Canada version 1.0 Reference Manual.
  - (B) A letter (the “**Energy Target Letter**”) confirming Project Co’s commitment (subject to the provisos in Section 2.18(b) of the Project Agreement) to Aggregate Energy Target and Discrete Energy Targets at levels equal or below those stated in Project Co’s RFP-2 Proposals accompanied by an Energy Benchmark Table in the form set forth in Appendix C of **Schedule N (Review Procedure)**:
    - (I) describing the discrete energy targets the sum total of which is equal to the Energy Target; and
    - (II) detailed information with respect to the assumptions used by Project Co to determine the Aggregate Energy Target.
- d. New schematic design drawings as follows:
- (A) Preliminary exterior wall sections (1:50 scale) and other scales as appropriate for entrance lobby, typical courtroom floor at waiting area and public corridor, and typical at line of judicial chambers.
  - (B) Site architectural landscape plan (1:500 scale) with details as appropriate;

- (C) Site plan showing mechanical, electrical, civil engineering and utility systems (1:500 scale);
- (D) Structural plans showing all vertical structural elements at each level (1:100 scale);
- (E) Single line site services layouts for site electrical supplies and systems, potable water, storm water, sanitary drains, and utilities, including street connections;
- (F) Single line schematic diagram for plumbing systems including but not limited to sanitary drainage, storm drainage, domestic hot and cold water distribution;
- (G) Single line schematic diagram for HVAC systems, including but not limited to heating water or glycol distribution, steam distribution, chilled water or glycol distribution and air distribution;
- (H) Single line schematic diagram of systems and distribution for fire suppression systems including but not limited to sprinklers, standpipes, special fire suppression systems;
- (I) Single line schematic diagram of building controls including but not limited to system architecture and zoning;
- (J) Single line diagram of fire alarm systems including zoning scheme;
- (K) Single line schematic diagrams for integrated security systems, including but not limited to building exterior, building entrances, holding area video surveillance, video surveillance of all other areas, door control systems, duress and parking alarm system, and intercom system;
- (L) Single line schematic diagram for public address system, master clock system;
- (M) Single line diagrams of structured cabling system showing vertical and horizontal distribution schemes, telecom point-of-entry, riser rooms, telephone equipment rooms, ancillary rooms;
- (N) Single line electrical power and lighting distribution diagram showing point-of- entry, transformers, switchboards, distribution panels, and surge protection;
- (O) Single line diagram of emergency power distribution scheme, including generator(s), switchgear, cabling and fuel storage and supply system; and

- e. Other Submittals including:
  - (A) Updated vertical transportation analysis;
  - (B) Updated preliminary finish schedule;
  - (C) Updated Code analysis and compliance strategy;
  - (D) Updated confirmation of compliance with net building areas; and
  - (E) Updated specifications showing modifications from Project Co's RFP-2 Proposal and from the Interim Schematic Design, new specifications for Submissions added during the Schematic Design Stage, and proposed substitutions to the specifications made in the Interim Schematic Design.
- (iii) It is acknowledged and agreed that Schematic Design Submissions relating generally to the following (and as more particular described in this 3.4), will be reviewed in accordance with **Schedule N (Review Procedure)** in a two-step process:
  - a. **Step 1:** review of Site Plan, Site Servicing and Landscaping Plans, Building Sections, Floor Plans and Specifications on or before February 19, 2007, provided that the Schematic Design Submissions relating thereto are provided by Project Co to HMQ in accordance with the Project Schedule; and
  - b. **Step 2:** review of LEED Credit, Building Elevations, Mechanical & Electrical Systems, Elevator & Escalator details, Reflective Ceiling Plans, Wall Sections & Details, Interior Details, Millwork and Security & Audio Visual Systems on or before March 27, 2007, provided that the Schematic Design Submissions relating thereto are provided by Project Co to HMQ in accordance with the Project Schedule.

### **3.5 Minimum Submissions Required for Review in the Design Development Stage.**

Project Co shall provide the following Submissions to HMQ for review and comment in accordance with **Schedule N (Review Procedure)** of the Agreement and as may be amended by mutual agreement of Project Co and HMQ in the Start-Up Meeting:

- (i) Design development documents selected generally in accordance with 3.0 including:
  - a. Architectural, structural, mechanical and electrical floor plans, including emergency generator layout and distribution system;
  - b. Floor layouts illustrating all structural elements, partitions, interior doors, glazing, updated millwork and FF&E, including power, voice and data



outlets, and courtroom audio visual equipment locations, power outlets required for equipment supplied by MAG, and other cabled systems;

- c. Building sections and elevations;
- d. Reflected ceiling plans for public entrances, all public spaces at ground and second floors of the courthouse building, public corridors, courtroom waiting areas, all courtrooms, motion rooms and conference/settlement rooms and the jury assembly room;
- e. Structural details;
- f. Exterior wall sections and cladding details;
- g. Final elevator and escalator details;
- h. Site plan, site services and details;
- i. Landscaping plans and details;
- j. Building science report reviewing envelope design and details;
- k. Revised table of contents for specifications showing new sections and an update of specification changes and substitutions with relevant back up information and samples;
- l. Interior elevations of courtrooms and all public spaces;
- m. Interior finishes colour and materials selection boards, which includes a minimum of three (3) complete options for interior finishes in accordance with Section 3.3(i)(f);
- n. Millwork plans, elevations and details;
- o. Finalized door and hardware schedules;
- p. Lighting design report, including analysis of illumination, reflectances, room cavity ratios, plane heights;
- q. Finalized lighting fixture schedules;
- r. Floor plans showing security systems layouts, locations of all security systems equipment, connection points and control points;
- s. Security equipment details; and
- t. Mock-up design package in accordance with the HMQ Design Requirements;

- u. Schematic drawings of all millwork elements shown in Space Layouts (as named in Schedule B, Part I, Volume I of the Agreement) including those in every courtroom, public counters, public waiting, judicial areas, library shelving, open of the areas, prisoner handling, lunch rooms, kitchens, etc. that show all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale) as appropriate;
  - v. Complete site details (1:100) and other scales as appropriate;
  - w. Single line audio/visual distribution diagrams showing cable management and a/v equipment rooms;
  - x. FF&E layout drawings as described in Section 3.4(i)(b)(B)(II) of this Schedule;
  - y. Detailed lighting design submittals, including fixture cut sheets and illumination level analysis;
  - z. Preliminary door and hardware schedules and hardware cut sheets;
  - aa. ODA compliance report;
  - bb. Building vibration analysis; and
  - cc. Updated building acoustical design report.
- (ii) Product information and samples of equipment from (a) Division E, Performance Specifications of Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement; and (b) Section 12.6 of Part I: Facilities Management Specification of **Schedule E (Service Period Works)** of the Agreement, as selected by HMQ in the Start-Up Meeting;
  - (iii) Updated construction quality control plan;
  - (iv) Comprehensive acoustical report reviewing all acoustical conditions;
  - (v) Acoustical details implementing recommendations of acoustical report;
  - (vi) Pedestrian level wind study to demonstrate that the development will not create unacceptable wind and snow accumulation conditions at building entrances, exits, courthouse plaza, landscaped open spaces and street sidewalks; and
  - (vii) LEED registration with CaGBC and LEED credits tracking documentation.

### **3.6 Design Development Work**

All of Project Co's work to advance Design Development of all or any discrete part of the Project Facilities shall be prepared generally in accordance with RAIC Canadian Handbook of Practice for Architects (section 2.3.6) and relevant OAA Practice bulletins

and related guidelines and documents, notwithstanding that some previously prepared parts of the design may already exceed these standards and guidelines.

#### **4.0 CONSTRUCTION DOCUMENTS STAGE**

During the Construction Documents Stage, Project Co shall, in addition to any other requirements set forth in the Agreement, advance the Construction Documents Work in respect of each discrete part of the Project Facilities to a level of completeness where Construction Work in respect of each discrete part of the Project Works can proceed with a reasonable expectation of minimal Changes and Variations. Consultations and discussions between HMQ and Project Co during Construction Documents Stage includes items relating to, but is not limited to Project Works to be completed during the Design Development Stage related to:

- (i) Base building elements that support MAG's courts program;
- (ii) fit-out of the base building to accommodate MAG's courts program;
- (iii) integrated security and access control systems;
- (iv) emergency systems;
- (v) original building components intended to last beyond the Expiry Date and in accordance with the Handback Requirements;
- (vi) selected building components that will be concealed during construction; and
- (vii) Site development.

#### **4.1 Coordination of the Work**

Project Co's activities throughout the Construction Documents Stage shall be led by the Project Co Architect who, together with the Construction Subcontractor, shall be Project Co's sole points of contact for HMQ for the Construction Documents Stage process. HMQ's design activities throughout the Construction Documents Stage will be lead by the HMQ Project Manager and the Design and Construction Compliance Consultant on behalf of HMQ who will be HMQ's sole representatives throughout the Construction Document Stage.

#### **4.2 Construction Documents Stage Process**

Project Co and its design team shall:

- (i) Prepare successively detailed Construction Documents Submissions based upon the Design Development Submissions and any other Submissions reasonably required by HMQ in order for HMQ, the Design and Construction Compliance Consultant, MAG, MAG Occupants and Non-MAG Occupants to understand the Construction Documents Work, for consideration by HMQ, MAG, MAG Occupants, Non-MAG Occupants and the Design and Construction Compliance Consultant, which Construction Documents Submissions and other Submissions

(as applicable) shall be provided at the intervals agreed by HMQ and Project Co in accordance with the Submissions Schedule and in accordance with the requirements for Submissions specified by HMQ in respect of other Submissions reasonably requested by HMQ.

- (ii) Work constructively and continuously with HMQ and MAG through the Design and Construction Compliance Consultant to consider and discuss feedback on each Construction Documents Submission.
- (iii) Continue the above sequence of submissions, consultations, and revisions as required to consider and discuss issues on any phase of Construction Documents Works before Construction Work begins on the said phase of Construction Documents Work.
- (iv) Ensure that Construction Documents Work and Record Drawings are prepared using the most recent version of Ontario Realty's Corporation's CAD Standards provided to Project Co by Ontario Realty Corporation (ORC CAD Standards March 2006), and that property surveys are prepared using the ORC Land Surveying Guidelines and Specifications, June 2003.

#### **4.3 Construction of Mock-Ups**

During Construction Documents Stage, at the time determined in accordance with Submissions Schedule and in accordance with the Submissions Schedule agreed to pursuant to Section 3.3(i)(h) and 3.3(i)(i), Project Co shall construct the mock-ups for a complete courtroom and public counter stations as described in the HMQ Design Requirements which mock-ups may be located outside the Site provided that they are located within the Greater Toronto Area. Project Co shall engage HMQ, MAG and its user representatives (including, for certainty, representatives of MAG Occupants and Non-MAG Occupants) and the Design and Construction Compliance Consultant through an active process of user walk-through, feedback comments, and adjustments to the mock-ups, which process shall be in accordance with the procedures determined at the Start-Up Meeting to consider the suitability of the mocked up constructions for their multiple applications in the Project Facilities. Project Co shall submit a report confirming all adjustments resulting from the MAG, HMQ, Design and Construction Compliance Consultant and user representative (including representatives of MAG Occupants and Non-MAG Occupants) review of mock-ups have been incorporated into relevant construction documents prepared in the Construction Documents Stage.

#### **4.4 Minimum Submissions Required for Review in the Construction Documents Stage**

Project Co shall provide the following Construction Documents Submissions to HMQ for review and comment in accordance with **Schedule N (Review Procedure)** of the Agreement, as may be amended by mutual agreement by HMQ and Project Co in the Start-Up Meeting:

- (i) Construction documents selected generally in accordance with Section 4.0 of this Schedule including:

- a. Architectural structural, mechanical and electrical floor plans;
  - b. Floor layouts showing locations of all security systems equipment, connection points and control points;
  - c. Floor layouts showing partitions, millwork and FF&E, including power, voice and data outlets, and courtroom audio visual equipment locations, power outlets required for equipment supplied by MAG, and other cabled systems;
  - d. Building sections and elevations;
  - e. Reflected ceiling plans for public entrances, all public spaces at ground and second floors of the courthouse building, public corridors, public waiting areas, all courtrooms, motion rooms, conference/settlement rooms and the jury assembly room;
  - f. Structural details;
  - g. Exterior wall sections and cladding details;
  - h. Elevator and escalator plans, sections and details;
  - i. Site plan, site services and details;
  - j. Landscaping plans and details;
  - k. Updated specifications and proposed substitutes;
  - l. Interior elevations of courtrooms and all public spaces;
  - m. Interior finish schedules;
  - n. Millwork plans, elevations, sections and details;
  - o. Door and hardware schedules;
  - p. Lighting fixture schedules;
  - q. Security systems plans and details;
  - r. Security equipment plans and details; and
  - s. Acoustical treatment plans and details;
- (ii) Specifications of equipment selected by HMQ from product information and samples of equipment from (a) Division E, Performance Specifications of Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement; and (b) Section 12.6 of Part I: Facilities Management Specification of **Schedule E**

**(Service Period Works)** of the Agreement, as selected by HMQ in the Start-Up Meeting;

- (iii) Report on review and adjustments mock-ups; and
- (iv) Progress report on LEED credit tracking documentation.

#### **4.5 Other Submissions**

During the Construction Document Stage, Project Co shall prepare such other Submissions as may be identified by HMQ, the Design and Construction Compliance Consultant, MAG and/or representatives of MAG Occupants and Non-MAG Occupants as is reasonably necessary in order to enable each of them to understand the Construction Documents Work.

#### **4.6 Construction Documents Work**

All Construction Documents Work shall be prepared generally in accordance with RAIC Canadian Handbook Practice for Architects (sections 2.3.7 and 2.3.8) and relevant OAA Practice bulletins and related guidelines and documents.

### **5.0 CONSTRUCTION STAGE**

#### **5.1**

- (a) In addition to the requirements set forth in the Agreement, at all times during Construction, Project Co shall allow HMQ, MAG and the Design and Construction Compliance Consultant (subject to complying with all relevant safety procedures, including any relevant health and safety plans of Project Co or the Construction Subcontractor, as delivered to HMQ in writing on the Date of Agreement) to review and inspect the Construction Work or to require the testing of any part or parts of the Construction Works, and to comment on compliance of the Construction Work with the requirements set forth in Agreement, including, without limitation, Construction Work related to:
  - (i) base building elements that support MAG's courts program;
  - (ii) fit out of the base building to accommodate MAG's courts program;
  - (iii) integrated security and access control systems;
  - (iv) emergency systems;
  - (v) base building components intended to remain in service beyond the Expiry Date and in accordance with the Handback Requirements;
  - (vi) selected components that will be concealed during construction; and
  - (vii) general quality of finish and workmanship throughout.

- (b) If the inspection demonstrates that the relevant part or parts of the Construction Works is or are defective or that Project Co has failed to comply with the requirements of the Agreement (including, for certainty, the HMQ Requirements and the Project Co Proposal Extracts) relevant to such part of the Construction Work, as determined by the Independent Certifier, Project Co shall rectify all such defects and non-compliance diligently and at no cost to HMQ and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection demonstrates that the relevant parts of the Construction Work is or are not defective and that Project Co has complied with all requirements of the Agreement (including, for certainty, the HMQ Requirements and the Project Co Proposal Extracts) relevant to such part or parts of the Construction Works, as determined by the Independent Certifier, any delay caused to the Project Works by the exercise of such rights shall, to the extent such inspection has caused a delay in achieving Completion by the Planned Completion Date, and subject to and in accordance with Article 25 (Delay Events) of the Agreement, be treated as a Delay Event and, subject to and in accordance with Article 26 (Compensation Events) of the Agreement, be treated as a Compensation Event.

## **5.2 Coordination of the Work**

Project Co's activities throughout the Construction Stage shall be lead by the Project Co Manager, who shall be Project Co's primary point of contact for HMQ for the Construction Stage process. HMQ's design activities throughout the Construction Stage will be lead by the HMQ Project Manager and the Design and Construction Compliance Consultant on behalf of HMQ who will be HMQ's sole representatives throughout the Construction Stage.

## **5.3 FF&E Process**

FF&E shall be installed into the Project Facilities in accordance with the requirements of Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)** in accordance with the requirements of Part IV: Cash Allowance Procedure of **Schedule B (Project Works)** and in accordance with the requirements set forth in the Agreement.

## **5.4 Construction Quality Control**

Project Co shall implement a construction quality control program based upon the construction quality control plan submitted in the RFP-2 Proposal, as may be updated and amended pursuant to review of such plan in accordance with Section 3.4 of this Schedule. Project Co shall provide construction quality reports every three (3) months, or as otherwise may be required by HMQ, and such reports shall be posted at regular intervals to the e Room.

## **5.5 HMQ Site Accommodation**

At mobilization Project Co shall provide a new construction site trailer(s) for use by the Independent Certifier, the Design and Construction Compliance Consultant and Province Persons, which shall remain in place until Completion or such other time as may be

mutually agreed by HMQ and Project Co. The trailer shall be located adjacent to convenient parking for up to six vehicles, connected with hard surfaced drained walkways providing direct access to the contractor's trailers and other significant features of the new construction. The trailer and appointments shall satisfy the following requirements, in each case, in a form acceptable to HMQ, acting reasonably:

- (i) insulated walls, roof and floors, with solid skirt around base, and double glazed operating windows to each enclosed space, weather-tight and set level with the floor above grade;
- (ii) cooled to maintain 22° C to +30° C outside in Summer and heated to maintain 20° C to – 25° C outside in Winter and ventilated at all times;
- (iii) all interior spaces lighted to 750 lux and sufficient exterior lighting levels for pedestrian safety;
- (iv) all doors shall be lockable and keyed;
- (v) sufficient interior area to provide two 10m<sup>2</sup> each lockable offices for the Independent Certifier and the Design and Construction Compliance Consultant, an open meeting area to accommodate up to eight persons seated at a table from time to time, a 4m<sup>2</sup> coffee area and an open entrance area of 6m<sup>2</sup> with coat closet;
- (vi) all areas shall be appropriately furnished with desks, chairs, a meeting table, a drawing lay-out table, drawing storage racks, water cooler and first aid cabinet;
- (vii) all areas shall be provided with 120 volt receptacles fed from a distribution panel inside the trailer;
- (viii) provide four (4) separate operating telephone lines independent from Project Co's lines, with handsets, with operating charges billed to HMQ;
- (ix) provide four (4) high speed data lines connected to HMQ's system, with operating charges billed to HMQ;
- (x) provide one (1) dedicated facsimile line connected to HMQ's offices, with operating charges billed to HMQ;
- (xi) a new leased multipurpose photocopier/scanner/printer networked to the data system, with a maintenance contract, and lease charges paid by Project Co;
- (xii) convenient access to separate, well maintained male and female washrooms with hot and cold water; and
- (xiii) all expenditures not expressly stated herein to be at the expense of or billed to HMQ and related to provision of the trailer (including, without limitation, such as rental, utilities and daily maintenance) shall be paid by Project Co.



## **5.6 Minimum Submissions Required for Review in the Construction Stage**

Project Co shall provide to HMQ for its review and discussion in accordance with **Schedule N (Review Procedure)** of the Agreement selected Construction Submissions as HMQ requires and any other Submissions as may be reasonably required by HMQ, which may include, but are not limited to, the following:

- (i) shop drawings (only as they relate to Project finishes, identified mechanical equipment and all security systems equipment), test reports, and inspection reports;
- (ii) Project Co proposed substitutions;
- (iii) Project Co Notices of Change, related drawings, specifications and cost estimates;
- (iv) deficiency reports;
- (v) any other Submissions HMQ reasonably requires to understand and accept the Project Work; and
- (vi) any other Submissions required to deal with Urgent Matters.

## **6.0 COMMISSIONING STAGE**

**6.1** Commissioning shall be implemented in accordance with the requirements of **Schedule C (HMQ Outline Commission Plan)** as modified by Project Co's Commissioning Program, once accepted by HMQ. For clarity, the Commissioning Stage includes the Commissioning Fine Tuning Period. Project Co will retain a Commissioning Agent who shall take the lead role in the entire Commissioning process, and shall ensure that the Design and Construction Compliance Consultant and Independent Certifier are afforded sufficient notice of every scheduled Commissioning test and provided with full and reasonable access to the Commissioning activities.

### **6.2 Minimum Submissions for Review**

Project Co shall provide to HMQ for its review, the draft Project Co Commissioning Program in accordance with the Agreement and any other Commissioning Submissions required to be delivered pursuant to the Agreement. Project Co shall provide HMQ with any other Submissions HMQ reasonably requires in order to understand the Commissioning process and the draft Project Co Commissioning Program.

## **7.0 COMPLETION STAGE**

**7.1** Completion shall be implemented in accordance with the terms of the Agreement and the requirements of **Schedule D (Completion Certification)** of the Agreement as may be modified by Project Co's Completion Plan if accepted by HMQ. Project Co will cooperate fully with the Independent Certifier and the Design and Construction Compliance Consultant to satisfy the conditions necessary to issue a Completion Certificate, including but not limited to:

- (i) sufficient notice of every scheduled Completion activity;
- (ii) full disclosure of all Project Works documents related to Completion;
- (iii) full and reasonable access to the Project Facilities to perform their inspections to determine Completion; and
- (iv) provision of any assistance from Project Co required to perform the inspections.

## **7.2 Minimum Submissions for Review in the Completion Stage**

- (i) Project Co shall provide a draft Completion Plan to HMQ for review in accordance with **Schedule N (Review Procedure)** of the Agreement not less than one hundred and fifty (150) days prior to the Planned Completion Date; and
- (ii) Any Project Works documents required to determine Completion.

## **7.3 Other Submissions**

Project Co shall provide HMQ with any other Submissions HMQ reasonably requires in order to understand the Project Works to be performed during the Completion Stage.

## **7.4 New MAG FF&E**

Prior to Completion, Project Co shall manage the procurement, receipt, set up and commissioning of New MAG FF&E, including power connections, as required by the Agreement, including, for certainty, as required by Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)** of the Agreement and as required pursuant to Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**.

## **8.0 OCCUPANCY STAGE**

**8.1** This Section describes an outline structure for the obligations of HMQ and Project Co during the Occupancy Stage in a manner that permits both parties to develop their own plans for occupying the Project Facilities in a timely way and that responds to the actual conditions of the Project Works, without precluding any opportunity for either party to adjust its plans to benefit the of quality of the Project Works.

### **8.2 Project Co Obligations.**

Project Co shall appoint a suitably experienced dedicated Project Co Manager to coordinate all Occupancy Work by Project Co during the Occupancy Stage, who shall undertake and complete all activities required to ensure the Occupancy Work proceeds in an orderly manner. Project Co shall:

- (i) in consultation with HMQ and MAG, develop a draft Occupancy Plan and submit to HMQ at a date not less than two hundred and seventy (270) days prior to the Planned Completion Date for HMQ's review. The Occupancy Plan shall confirm that all activities related to preparation of the Project Facilities for moving MAG

Occupants and Non-MAG Occupants into the Project Facilities are known and scheduled and such activities shall be included in the Occupancy Plan.

- (ii) manage the progress and orderly completion of all activities identified in the Occupancy Plan;
- (iii) both prior to and after Completion and without in any way limiting rights of access set forth in the Agreement, facilitate access to the Project Facilities including the New MAG FF&E where required by MAG, MAG Staff, HMQ staff, HMQ, any Province Persons or any of HMQ's third party contractors, subject to complying with all relevant safety plans of Project Co, as delivered to HMQ in writing on the Date of Agreement, to install telephone systems, information technology systems, security systems, communications systems and related systems into the Project Facilities and/or FF&E or the New MAG FF&E;
- (iv) after Completion, facilitate access to the Project Facilities and co-ordinate the activities of HMQ's bonded and insured moving contractor when in the Project Facilities, which moving contractor will place all Existing FF&E, information technology and telephone equipment and all courthouse contents including contents of filing systems, offices and storage areas, relocated from Old Facilities, into their intended location;
- (v) both prior to and after Completion and without in any way limiting rights of access set forth in the Agreement, facilitate access to any area of the Project Facilities required by MAG Staff, HMQ staff, any Province Persons and HMQ's third party contractors to install telephone systems, information technology systems and other MAG Occupant and Non-MAG Occupant systems or equipment, and to permit them to perform other activities required to prepare the Project Facilities for Courthouse Activities;
- (vi) ensure all Project Co deficiencies identified (and not waived) by the Independent Certifier and that are not Minor Matters are corrected by Project Co before the Completion Date;
- (vii) ensure Project Co provides adequate orientation and training for MAG Occupants and Non-MAG Occupants during the Occupancy Stage, as required in **Schedule C (HMQ Outline Commissioning Plan)** of the Agreement;
- (viii) both prior to and after Completion, complete other occupancy related tasks required to prepare the Project Facilities for commencement of Courthouse Activities; and
- (ix) where requested, provide reasonable assistance to MAG Occupants and Non-MAG Occupants to provide uninterrupted Courthouse Activities for the functions that have relocated to the Project Facilities throughout the period of relocation of remaining functions from the Old Facilities to the Project Facilities.

**8.3** Where relocation of any MAG Staff, MAG Occupants or Non-MAG Occupants cannot be scheduled in accordance with the Occupancy Plan for any reason, MAG in its sole

discretion, may determine that its requirements will be served better by scheduling parts of the relocation of MAG Staff, MAG Occupants and Non-MAG Occupants at a different time than that set forth in the Occupancy Plan and Project Co will provide such assistance as set forth in the Occupancy Plan at such new time.

#### **8.4 Minimum Submissions for Review in this Stage**

- (i) Project Co shall provide a draft Occupancy Plan to HMQ for review in accordance with **Schedule N (Review Procedure)** of the Agreement not less than two hundred and seventy (270) days before the Planned Completion Date.
- (ii) Project Co shall provide HMQ with any other Submissions HMQ reasonably requires in order to understand the Occupancy Work.

**SCHEDULE B**  
**PART III**

**FURNITURE, FIXTURES AND EQUIPMENT PROCESS**

**Definitions**

Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such term in the Agreement. The following terms have the following meanings:

**General**

This schedule describes the responsibilities of Project Co to (a) both prior to Completion and during the Service Period, arrange for the purchase by HMQ of New MAG FF&E, (b) prior to Completion, install New MAG FF&E (excluding A/V Equipment) into the Project Facilities in accordance with the FF&E layouts set forth in the Schematic Design, construction documents and in accordance with the Agreement; and (c) prior to Completion, install A/V Equipment into the Project Facilities in accordance with the requirements described in Part IV: Cash Allowance Procedure of Schedule B (Project Works); (d) the FF&E responsibilities of Project Co during the Service Period. The requirements set forth in this Schedule are in addition to any other requirements set forth in the Agreement (including, for certainty, Part I: Facilities Management Specification of **Schedule E (Service Period Works)**). MAG shall have legal and beneficial ownership of all New MAG FF&E. Project Co shall not, at any time, have legal or beneficial ownership of New MAG FF&E. Project Co shall act solely as a consultant of HMQ when arranging for the purchase of New MAG FF&E and Project Co and HMQ acknowledge and agree that HMQ shall execute purchase agreements directly with the vendors of New MAG FF&E (including, for certainty, all A/V Equipment) arranged for purchase under this Schedule, **Schedule B: Part IV (Cash Allowance Procedure)** and pursuant to the Agreement), and no agency relationship between HMQ, MAG and/or Project Co is created or established in connection with performing such functions. HMQ will relocate and install all Existing FF&E for MAG Occupants and Non-MAG Occupants into the Project Facilities.

**Project Management during the Agreement Term**

1. In respect of the arrangement for purchase of New MAG FF&E and the installation by Project Co of New MAG FF&E into the Project Facilities pursuant to the Agreement (whether prior to Completion or during the Service Period), Project Co acknowledges and agrees that it shall:
  - (a) provide full project management services related to the purchase, receiving, setup, quality control, coordination of trades, commissioning and correction of deficiencies of all such New MAG FF&E;

- (b) administer vendor warranties for the entire installation of New MAG FF&E acquired by Project Co in accordance with the Agreement; and
- (c) in respect of New MAG FF&E required to be arranged for purchase by Project Co prior to Completion only, pay vendors of all New MAG FF&E in accordance with the requirements set forth in the applicable purchase orders approved by HMQ.

**Purchase of New MAG FF&E During the Agreement Term**

2. The procedure for the arrangement for purchase of New MAG FF&E by Project Co during the Agreement Term shall be as follows:
  - (a) Prior to Schematic Design Acceptance or such other date as may be agreed to by HMQ and Project Co, each acting reasonably, HMQ shall cause MAG to provide Project Co with a complete and itemized list of all New MAG FF&E (other than A/V Equipment that Project Co is required to arrange for purchase prior to the Completion Date) that Project Co is required to arrange for purchase and installation prior to the Completion Date.
  - (b) Project Co will prepare detailed procurement documents for every New MAG FF&E (other than A/V Equipment that Project Co is required to arrange for purchase prior to the Completion Date, the process and requirements for which is set forth in Part IV: Cash Allowance Procedure of Schedule B (Project Works) of the Agreement) item to be purchased for the Project Facilities which shall be subject to the review and written approval by HMQ. Procurement documents prepared by Project Co prior to Completion in respect of New MAG FF&E (other than A/V Equipment) to be purchased in order for Project Co to comply with the HMQ Design Requirements must be prepared (in respect of New MAG FF&E other than A/V Equipment) based on layouts set forth in the Schematic Design and construction documents and after consultation with HMQ and MAG. Procurement documents prepared by Project Co after Completion shall include provisions that the vendor shall submit all invoices in respect of items purchased directly to HMQ or as HMQ may otherwise direct.
  - (c) At the request of Project Co, HMQ shall commence discussions with Project Co regarding the list of vendors of record referred to in Section 6.13 of the Agreement; provided that HMQ shall not be required to commence discussions any earlier than twenty (20) months prior to the Planned Completion Date. Project Co shall submit all draft procurement documents (for all New MAG FF&E (other than A/V Equipment) to be acquired and installed at the Project Facilities prior to Completion) relating to the arrangement for purchases of New MAG FF&E (other than A/V Equipment) for review and written approval by HMQ no earlier than eighteen (18) months prior to the Planned Completion Date. HMQ shall review the draft procurement documents within sixty (60) days of receipt of same and either provide Project Co with comments on the draft

procurement documents or notify Project Co that it accepts the terms and conditions of all or any one of the procurement documents. If HMQ provides comments to Project Co on all or any one of the procurement documents, Project Co shall consult with the vendor of such New MAG FF&E (other than A/V Equipment) and shall, after such consultation, revise the applicable procurement documents within ten (10) Business Days after receipt of such comments from HMQ and submit to HMQ for review and approval a re-draft of each such procurement document which HMQ has not accepted. HMQ shall approve and/or provide additional comments on the re-draft(s) of the applicable procurement documents within fifteen (15) Business Days of receipt of same. If HMQ provides comments on the re-draft of the applicable New MAG FF&E (other than A/V Equipment) procurement documents, the time period for re-submission of re-drafts of such New MAG FF&E (other than A/V Equipment) procurement documents shall be the same time period set forth in the immediately preceding two sentence, respectively.

- (d) Project Co will arrange for the purchase of all New MAG FF&E (other than A/V Equipment that Project Co is required to arrange for purchase on or prior to the Completion Date, the process and requirements for which is set forth in Part IV: Cash Allowance Procedure of Schedule B (Project Works) of the Agreement) through the Government vendor of record as advised by HMQ to Project Co (the “**VOR**”) for all items covered by a VOR. The parties acknowledge and agree that this Section 2(d) is subject to the provisions of Section 6.13 of the Agreement;
- (e) New MAG FF&E items (other than A/V Equipment that Project Co is required to arrange for purchase on or prior to the Completion Date, the process and requirements for which is set forth in Part IV: Cash Allowance Procedure of Schedule B (Project Works) of the Agreement) not covered by a VOR will, subject to and in accordance with Section 6.13 of the Agreement, be purchased through a supplier or suppliers acceptable to OIPC and MAG (such acceptance not to be unreasonably withheld) under a competitive process consistent with the Government of Ontario practice for the purchase of goods and services. Where Project Co is, for any reason, unable to tender the New MAG FF&E supply contract in accordance with the immediately preceding sentence, Project Co shall tender the New MAG FF&E supply contract to a Person acceptable to OIPC and MAG (such acceptance not to be unreasonably withheld) pursuant to an alternative competitive process satisfactory to OIPC and MAG in their reasonable discretion;
- (f) Reimbursement for costs incurred by Project Co for the arrangement for purchase of New MAG FF&E (other than A/V Equipment) by Project Co prior to Completion is set out in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**. Project Co's management fee for the arrangement for purchase and installation of New MAG FF&E after Completion is set out in Section 17.7 of the Agreement;

- (g) Project Co will not arrange for the purchase of any New MAG FF&E without the express written consent of HMQ; and
- (h) The procedure for purchase and installation of A/V Equipment prior to Completion is set forth in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)** of the Agreement.

### **Planning, Set Up and Installation**

- 3. Project Co shall coordinate all FF&E planning with the FF&E Consultant (as defined in paragraph 13 below), for design, planning, set up and installation of all Existing FF&E and Non-MAG Occupant FF&E to be relocated by HMQ from the Old Facilities.
- 4. Project Co shall ensure that all New MAG FF&E (other than A/V Equipment) to be installed prior to Completion is installed according to FF&E layouts set forth in the Schematic Design and the construction documents, and shall ensure that the entire installation is ready for use and defect free on or before the Completion Date, other than any portion of the installation specifically waived in writing by HMQ. Project Co shall ensure that all A/V Equipment to be installed prior to Completion in accordance with the requirements as set out in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)** and shall ensure that the entire installation is ready for use and defect free on or before the Completion Date other than any portion of the installation specifically waived in writing by HMQ.
- 5. Project Co will provide access to the Project Facilities for purposes of the Existing FF&E installation for representatives of HMQ and third party contractors required, in part, to set up the Existing FF&E and utilities or services related to the Existing FF&E.

### **Post Installation Services**

- 6. As more particularly described in Section 18, Part I of **Schedule E (Service Period Works)**, Project Co shall:
  - (a) arrange for qualified service agents for maintenance and repair of FF&E (excluding Non-MAG Occupant FF&E) after the expiration of the vendor's warranty and HMQ shall reimburse Project Co for the costs of such service agents provided however that HMQ shall, in its discretion, have the right to obtain these services independently and Project Co will facilitate building access for the service agents;
  - (b) subject to the last sentence of this subsection 6(b), after the Completion Date, set up a qualified service agent to implement changes to MAG furniture layouts as designed and directed by HMQ. Such services shall be Special Project Services and Project Co and HMQ shall comply with all requirements in Article 14 of the Agreement in respect of such services. Project Co will recover the costs for such services in accordance with Section 14.1(i) of the Agreement. HMQ shall, in its discretion, have the



right to obtain these services independently and Project Co will facilitate building access for all service agents; and

- (c) subject to and in accordance with the HMQ Facilities Management Requirements, at its own cost, prepare an inventory of all FF&E (excluding Non-MAG Occupant FF&E), maintain the inventory in an asset tracking system, and manage the inventory of FF&E (excluding Non-MAG Occupant FF&E) spare parts on behalf of HMQ, which includes removal from the workplace, storage and delivery of parts to the workplace for access by the service agent when implementing changes to furniture layouts. HMQ will provide to Project Co an inventory of Existing FF&E. Project Co will maintain the entire inventory in the manner described in this Section 6 irrespective of whether Project Co or an independent service agent performs the services described in subsections 6(a) and 6(b).

### **Non-MAG Occupants**

- 7. Non-MAG Occupants will provide their own FF&E (both existing and new) for their respective areas in the Project Facilities and Project Co will not be required to arrange for the purchase of any FF&E on behalf of Non-MAG Occupants.
- 8. Project Co will, in accordance with Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement, plan and design all Non-MAG Occupant FF&E.
- 9. HMQ will relocate and install all Non-MAG Occupant FF&E into the Project Facilities.
- 10. Project Co is not required to provide any post installation services to Non-MAG Occupants as described under the heading "Post Installation Services" above. A Non-MAG Occupant may contract these services with Project Co independently of any arrangement described in the Agreement. Project Co will facilitate building access for any such service agents.
- 11. **Relocation from Old Facilities**
  - (a) HMQ will engage and supervise an approved bonded moving contractor to relocate the contents of offices, workstations, and central file systems, the contents of any storage areas and other Existing FF&E and Non-MAG Occupant FF&E from the Old Facilities into the Project Facilities. The FF&E Consultant will arrange for the disposition of all remaining items on behalf of MAG, at HMQ's cost.
  - (b) Project Co will facilitate access by the moving contractor to the Project Facilities, and HMQ shall ensure that the moving contractors comply with any health and safety and/or security requirements of Project Co or the Construction Subcontractor as disclosed in writing to HMQ on the Date of Agreement when exercising such rights.

**Existing FF&E**

12. HMQ will retain an independent consultant (the “**FF&E Consultant**”) to inventory all Existing FF&E at the Old Facilities.
13. The FF&E Consultant will prepare an inventory of any items to be relocated to the Project Facilities by HMQ, to be included in the FF&E layouts set forth in the Schematic Design by Project Co.
14. All Existing FF&E will be installed into the Project Facilities by HMQ at HMQ's cost in accordance with Section 6.4 of the Agreement.

**Safety and Security**

15. Whenever Project Co is required, pursuant to this Schedule, to provide or facilitate access to the Project Facilities to third parties such as contractors or agents to perform the post-installation services set forth in Section 6 hereof, such third party contractors or agents shall comply with the health, safety and/or security requirements of Project Co or the Construction Subcontractor as disclosed in writing to HMQ on the Date of Agreement when exercising such rights.

**SCHEDULE B**  
**PART IV**  
**CASH ALLOWANCE PROCEDURE**

**1.0 DEFINITIONS**

1.1 All capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agreement. The following terms have the following meanings:

"**A/V Equipment Budget**" means the budget for the arrangement for purchase of A/V Equipment for the Project Facilities by Project Co prior to Completion.

"**A/V Cash Allowance**" means the cash allowance for A/V Systems and installation of A/V Equipment as set forth in Section 2.0.

"**A/V Cash Allowance Amount**" has the meaning set forth in Section 2.5 of this Schedule.

"**A/V Design Consultant**" means Project Co's audio-visual design consultant appointed in accordance with Section 2.4(a).

"**A/V Design and A/V Specifications**" has the meaning ascribed to in Section 2.4(c).

"**A/V Equipment**" means the self-contained audio-visual end-device equipment connected but not hard-wired to the audio-visual cabling systems at the Project Facilities.

"**A/V Systems**" means the audio-visual systems to be contained at the Project Facilities, as more particularly described in Section E1021 of Volume 2 of Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement.

"**Art and Artifact Cash Allowance**" means that the cash allowance for the design, fabrication and installation of display systems and of artifacts and art for MAG and HMQ display systems, artifacts and art to be located at the Project Facilities.

"**Art and Artifact Cash Allowance Amount**" has the meaning set forth in Section 8.8 of this Schedule.

"**Art and Artifact Requirements**" has the meaning set forth in Section 8.1;

"**Design Development Stage**" has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**.

**"Environmental Consultant Cash Allowance"** means the cash allowance for the retention of the Environmental Consultant by the City for purposes described in the Agreement and in the Undertakings.

**"Environmental Consultant Cash Allowance Amount"** has the meaning set forth in Section 6.6 of this Schedule.

**"FF&E Budget"** means the budget for the arrangement for purchase of New MAG FF&E (but excluding A/V Equipment) for the Project Facilities by Project Co prior to Completion.

**"Land Purchase Cash Allowance"** means the cash allowance for the purchase by the City of the lands forming part of the Site.

**"Perimeter Security Barrier"** means security barrier surrounding the Site and the Project Facilities.

**"Perimeter Security Barrier Cash Allowance"** means the cash allowance for the construction costs (including Direct Costs) related to the construction of the Perimeter Security Barrier including a combination of structural bollards, concrete benches and other hard landscape on Bond Street, Division Street and Courthouse Road and within the Courthouse Plaza as well as such other perimeter security features as are identified by MAG and developed further in cooperation by MAG and Project Co during the Schematic Design Stage and Design Development Stage.

**"Perimeter Security Barriers Cash Allowance Amount"** has the meaning set forth in Section 9.6 of this Schedule.

**"Land Purchase Cash Allowance Amount"** has the meaning set forth in Section 7.5 of this Schedule.

**"Police Systems Cash Allowance"** means the cash allowance for rough-in of the Durham Regional Police Services radio communications systems conduits at the Project Facilities prior to Completion.

**"Police Systems Cash Allowance Amount"** has the meaning set forth in Section 5.7 of this Schedule.

**"Police Systems Design Development Documents"** means has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**.

**"Schematic Design Stage"** has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**.

- 1.2 For purposes of this Schedule, any reference to "New MAG FF&E" in this Schedule shall not include A/V Equipment.

## **2.0 A/V CASH ALLOWANCE**

- 2.1 The A/V Cash Allowance does not include the following items: all costs associated with design and installation of all rough-in requirements of A/V Systems, including but not limited to: equipment rooms, electrical and power supplies and outlets to all equipment locations, cable management systems, raceways and conduits, audio-visual service rooms, central court recording system space (in the tape storage room), equipment space and cable management provisions in millwork.
- 2.2 In order to delay the design and specification of A/V Systems to a stage where MAG can take advantage of the latest technology and to custom-design the A/V Systems to MAG's exact requirements, Project Co shall carry an A/V Cash Allowance. The A/V Cash Allowance includes the design, updating of specifications, installation (including cabling) and commissioning of A/V Systems and A/V Equipment by a specialized A/V contractor approved by HMQ, as described below. The procurement of A/V Equipment is not included in the A/V Cash Allowance, but is covered by the A/V Equipment Budget and the procedures set forth in Section 3.0 of this Schedule. Project Co shall include in its project costs (which will form part of the Monthly Service Payments (as they may be adjusted based on a determination of the Independent Certifier as set forth in Sections 2.4(f) and 2.4(i) of this Schedule)) the A/V Cash Allowance Amount.
- 2.3 The A/V Cash Allowance includes: (i) the cost to Project Co to design and update specifications, installations (including cable) and commissioning of A/V Systems and A/V Equipment by a specialized A/V contractor approved by HMQ, as described below; and (ii) the Project Co management fees. For certainty, the A/V Cash Allowance does include the costs incurred by Project Co for the A/V Design Consultant.
- 2.4 The work included in the A/V Cash Allowance is as follows:
- (a) Project Co shall retain a suitably qualified audio-visual design consultant acceptable to HMQ, and with no affiliation to audio-visual equipment manufacturers, suppliers or distributors ("**A/V Design Consultant**").
  - (b) Before design review of the A/V Systems and A/V Equipment begins, the A/V Design Consultant shall consult with the Design and Construction Compliance Consultant and shall update Section E1021 of the Performance Specifications set forth in Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement, to ensure the specifications meet MAG's most current requirements.
  - (c) The A/V Design Consultant shall prepare detailed audio-visual design and specifications for the A/V Systems and A/V Equipment (the "**A/V Design**

**and A/V Specifications"**), to include A/V Systems design, A/V Equipment, cabling, installation and commissioning requirements and Project Co shall submit a draft of the A/V Design and A/V Specifications for review and approval by HMQ no earlier than twenty (20) months prior to the Planned Completion Date. This date is to ensure the latest technology is included in the procurement of equipment. HMQ shall review the draft A/V Design and A/V Specifications within sixty (60) days and either provide Project Co with comments on such specifications or notify Project Co that it accepts such specifications. If HMQ provides comments to Project Co on the draft A/V Design and A/V Specifications, Project Co shall revise such specifications within ten (10) Business Days after receipt of such comments and submit to HMQ a re-draft of the A/V Design and A/V Specifications to HMQ for review and approval. HMQ shall approve and/or provide additional comments on the re-draft of the A/V Design and A/V Specifications within fifteen (15) Business Days of receipt of same. If HMQ provides comments on the re-draft of the A/V Design and A/V Specifications, the time period for re-submission of re-drafts by Project Co to HMQ and the time period for providing comments or acceptance of such re-draft A/V Design and A/V Specifications by HMQ shall be same time periods set forth in the immediately preceding two sentences, respectively.

- (d) At the request of Project Co, HMQ shall commence discussions with Project Co regarding the list of vendors of record referred to in Section 6.13 of the Agreement; provided that HMQ shall not be required to commence discussions any earlier than seventeen (17) months prior to the Planned Completion Date. Project Co will arrange for the supply, installation and commissioning of the A/V Equipment through the Government vendor of record as advised by HMQ to Project Co (subject to Section 6.13 of the Agreement). If HMQ has not advised Project Co of the Government vendor of record on or before the date which is fifteen (15) months prior to the Planned Completion Date, Project Co shall, in accordance with Section 6.13 of the Agreement, tender the A/V Equipment supply, installation and commissioning contract to a supplier or suppliers acceptable to OIPC and MAG (such acceptance not to be unreasonably withheld) under a competitive process consistent with the Government of Ontario practice for the purchase of goods and services. Where Project Co is, for any reason, unable to tender the A/V Equipment supply, installation and commissioning contract in accordance with the immediately preceding sentence, Project Co shall tender the A/V Equipment supply, installation and commissioning contract to a Person acceptable to OIPC and MAG (such acceptance not to be unreasonably withheld) pursuant to an alternative competitive process satisfactory to OIPC and MAG in their reasonable discretion, provided, however, in each case, the requirements of Article 9 (Subcontracting) of the Agreement apply in respect thereof. Project Co will prepare detailed procurement documents for every A/V Equipment item to be purchased for the Project

Facilities as well as for the supply, installation and commissioning contract in respect of the A/V Systems and A/V Equipment, each of which shall be subject to the review and written approval by HMQ. Procurement documents prepared by Project Co in respect of A/V Equipment and A/V Systems design, installation and commissioning must be prepared based on layouts set forth in the HMQ Design Requirements (as it may be updated pursuant to Section 2.4(b) of this Schedule). Project Co shall submit all draft procurement documents for review and written approval by HMQ no earlier than one (1) year prior to the Planned Completion Date. HMQ shall review the draft procurement documents within sixty (60) days of receipt of same and either provide Project Co with comments on the draft procurement documents or notify Project Co that it accepts the terms and conditions of all or any one of the procurement documents. If HMQ provides comments to Project Co on all or any of the procurement documents, Project Co shall consult with the supplier and service provider in respect of such A/V Equipment and shall, after such consultation, revise the applicable procurement documents within ten (10) Business Days after receipt of such comments from HMQ and submit to HMQ for review and approval a re-draft of each such procurement document which HMQ has not accepted. HMQ shall approve and/or provide additional comments on the re-draft(s) of the applicable procurement documents within fifteen (15) Business Days of receipt of same. If HMQ provides comments on the re-draft of the applicable procurement documents, the time period for re-submission of re-drafts of such procurement documents shall be the same time period set forth in the immediately preceding two sentence, respectively.

- (e) The A/V Equipment installation shall be completed in accordance with the HMQ Design Requirements and in accordance with the A/V Design and A/V Specifications approved by HMQ. The A/V Equipment installation shall be completed prior to Completion and shall be completed in accordance with the HMQ Design Requirements (as it may be revised in accordance with Section 2.4(b)).
- (f) Any adjustments to unspent (or shortfall) portions of the A/V Cash Allowance Amount will be verified and reconciled by the Independent Certifier after the Completion Date.
- (g) Project Co shall be entitled to receive a management fee in respect of arranging for services relating to the A/V Systems and A/V Equipment as described in this Section 2.0. Payment for Project Co's management fee shall be [REDACTED] percent ([REDACTED]%) of the A/V Cash Allowance expended by Project Co (excluding any management fees paid or payable to Project Co in respect of services provided under this Section 2.0).

- (h) Project Co will extend to HMQ refunds, trade and quantity discounts, which may be received in procurement under this A/V Cash Allowance, except discounts for prompt payment.
- (i) In submitting final adjustments of this A/V Cash Allowance to the Independent Certifier for reconciliation (which shall be no later than ten (10) days after the Completion Date), Project Co shall include duplicate summary statements and copies of receipted invoices, substantiating expenditures in respect of design and installation and commissioning of A/V Systems and A/V Equipment under the A/V Cash Allowance, as more particularly described in this Section 2.0. The Independent Certifier shall reconcile the A/V Cash Allowance in accordance with Section 2.4(f) above within twenty (20) days after receipt from Project Co of the applicable invoices.

## 2.5 **A/V Cash Allowance Amount**

The A/V Cash Allowance for the audio-visual design, installation and commissioning work at the Project Facilities as described in this Section 2.0 (including all related Project Co management fees) is Cdn.\$[REDACTED] including applicable taxes (the "A/V Cash Allowance Amount"), but, for certainty, is net of the cost to arrange for purchase of A/V Equipment.

## 3.0 **A/V EQUIPMENT BUDGET**

- 3.1 There will be an A/V Equipment Budget for the purchase of A/V Equipment. Prior to Completion, Project Co shall arrange for the purchase of A/V Equipment in accordance with Section 2.4(d) of this Schedule and in accordance with the HMQ Design Requirements (as it may be revised in accordance with Section 2.4(b) above).
- 3.2 The procedures set forth in Section 2.4(d) of this Schedule in respect of the arrangement for purchase of A/V Equipment apply. This Section 3.0 applies only to the procurement of A/V Equipment by Project Co prior to Completion.
- 3.3 All A/V Equipment will be owned by MAG.
- 3.4 The A/V Equipment Budget will be retained by HMQ, from which Project Co will be paid upon receipt of verified invoices, as set forth below. The A/V Equipment Budget is intended only to compensate Project Co for (i) the actual cost of each individual item of A/V Equipment arranged for purchase by Project Co; (ii) applicable taxes for such A/V Equipment delivered by the vendor to the Project Facilities loading dock; (iii) Project Co's management fees for providing the services described in this Section 3.0; and (iv) Project Co's commercially reasonable financing costs (for certainty, reasonable financing costs shall not include any payment of any gross-up amounts for withholding taxes) incurred in respect of the arrangements for purchase of the A/V Equipment. The items referenced in Sections 3.4(i) through and including Section 3.4 (iv) are not to be



carried in the Project cost to Project Co and will not form part of the Monthly Service Payments to Project Co

- 3.5 Project Co's management fee for arranging the purchase of A/V Equipment shall be **[REDACTED]** percent (**[REDACTED]**%) of the A/V Equipment Budget which has been spent by Project Co (excluding any management fees paid or payable to Project Co in respect of services provided under this Section 3.0).

3.6 **Payment of A/V Equipment Budget**

- (a) HMQ shall pay Project Co for arranging for the purchase of and paying for A/V Equipment occurring prior to the Completion Date within the later of (i) thirty (30) days after the Completion Date; and (ii) thirty (30) days after the date Project Co has provided HMQ with invoices therefore (including all invoices stating the actual cost for each item of A/V Equipment and documentation evidencing Project Co's commercially reasonable financing costs incurred in respect of the arrangements for purchase of the A/V Equipment). The amount payable by HMQ to Project Co shall be (i) the actual cost of each individual item of A/V Equipment arranged for purchase by Project Co; (ii) applicable taxes for such A/V Equipment delivered by the vendor to the Project Facilities loading dock; (iii) Project Co's management fees for providing the services described in this Section 3.0; and (iv) Project Co's commercially reasonable financing costs (for certainty, reasonable financing costs shall not include any payment of any gross-up amounts for withholding taxes) incurred in respect of the arrangements for purchase of the A/V Equipment.
- (b) Payment of Project Co's management fee in connection with arrangement for the purchase of A/V Equipment shall be based on the actual cost of the A/V Equipment purchased by Project Co in accordance with the terms of the Agreement.
- (c) If payment is not made by HMQ in accordance with Section 3.6(a) above, HMQ shall pay interest to Project Co on the amount unpaid (without duplication of other amounts recovered by Project Co pursuant to the Agreement), commencing on the first (1<sup>st</sup>) day after the date on which the amount is required to be paid pursuant to Section 3.6(a) until paid at the rate set out in Section 51.4 of the Agreement.

3.7 **A/V Equipment Budget**

The HMQ budget for the A/V Equipment (including all related Project Co management fees) as described in this Section 3.0 is Cdn.\$**[REDACTED]** including applicable taxes.

#### **4.0 NEW MAG FF&E BUDGET**

4.1 This Section 4.0 applies only to the arrangement for purchase of New MAG FF&E by Project Co prior to Completion. See Part III: Furniture, Fixtures and Equipment Process of **Schedule B (Project Works)** of the Agreement for further details on Project Co's obligations and the procedures to be followed in respect of installation and procurement of New MAG FF&E. Prior to Completion, Project Co shall arrange for the purchase of New MAG FF&E and install such New MAG FF&E into the Project Facilities in accordance with the HMQ Design Requirements.

4.2 All New MAG FF&E will be owned by MAG.

4.3 The FF&E Budget is retained by HMQ, from which Project Co will be paid upon receipt of verified invoices, as set forth below. The FF&E Budget is intended only to compensate Project Co for (i) the actual cost of each individual item of New MAG FF&E arranged for purchase by Project Co; (ii) applicable taxes for such New MAG FF&E items delivered by the vendor to the Project Facilities loading dock; (iii) Project Co's management fees for providing the services described in this Section 4.0; and (iv) Project Co's commercially reasonable financing costs (for certainty, reasonable financing costs shall not include any payment of any gross-up amounts for withholding taxes) incurred in respect of the acquisition of the New MAG FF&E. The items referenced in Section 4.3(i) though and including Section 4.3(iv) are not to be carried in the Project costs to Project Co and will not form part of the Monthly Service Payments to Project Co

4.4 Project Co's management fee for arranging the purchase of New MAG FF&E shall be **[REDACTED]** percent (**[REDACTED]**%) of the FF&E Budget which has been spent by Project Co (excluding any management fees paid or payable to Project Co in respect of services provided under this Section 4.0).

#### **4.5 Payment of New MAG FF&E**

(a) HMQ shall pay Project Co for arranging for the purchase of and paying for New MAG FF&E occurring prior to the Completion Date within the later of (i) thirty (30) days after the Completion Date; and (ii) thirty (30) days after the date Project Co has provided HMQ with invoices therefore (including all invoices stating the actual cost for each item of New MAG FF&E and documentation evidencing Project Co's commercially reasonable financing costs (for certainty, reasonable financing costs shall not include any payment of any gross-up amounts for withholding taxes) incurred in respect of the arrangement for purchase of the New MAG FF&E). The amount payable by HMQ to Project Co shall be (i) the actual cost of each individual item of New MAG FF&E arranged for purchase by Project Co; (ii) applicable taxes for such New MAG FF&E items delivered by the vendor to the Project Facilities loading dock; (iii) Project Co's management fees for providing the services described in this Section

4.0; and (iv) Project Co's commercially reasonable financing costs (for certainty, reasonable financing costs shall not include any payment of any gross-up amounts for withholding taxes) incurred in respect of the acquisition of the New MAG FF&E.

- (b) Payment of Project Co's management fee in connection with arranging for the purchase of New MAG FF&E shall be based on the actual cost of the New MAG FF&E purchased by Project Co in accordance with the terms of the Agreement.
- (c) If payment is not made by HMQ in accordance with Section 4.5(a) above, HMQ shall pay interest to Project Co on the amount unpaid (without duplication of other amounts recovered by Project Co pursuant to the Agreement, commencing on the first (1<sup>st</sup>) day after the date on which the amount is required to be paid pursuant to Section 4.5(a) until paid at the rate set out in Section 51.4 of the Agreement.

#### 4.6 **FF&E Budget**

- (a) The HMQ budget for the New MAG FF&E (including all related Project Co management fees) as described in this Section 4.0 is Cdn.\$[REDACTED] including applicable taxes.
- (b) The attached Appendix 1 identifies the areas of the Durham Consolidated Courthouse where New MAG FF&E will be funded from the FF&E Budget, the areas of the Durham Consolidated Courthouse for which the FF&E will be the responsibility of Non-MAG Occupants, and identifies the types of New MAG FF&E that will be subject to the FF&E Budget.

#### 5.0 **POLICE SYSTEMS CASH ALLOWANCE**

- 5.1 Project Co shall carry a Police Systems Cash Allowance. As described in further detail below, the Police Systems Cash Allowance includes the rough-in of Durham Regional Police Services radio communications systems conduits. Project Co shall include in its project costs (which will form part of the Monthly Service Payments (as they may be adjusted based on a determination by the Independent Certifier as set forth in Sections 5.4 and 5.7 of this Schedule)) the Police Systems Cash Allowance Amount.
- 5.2 The Police Systems Cash Allowance includes: (i) the cost to Project Co to perform the rough-in of Durham Regional Police Services radio communications systems conduits; and (ii) the Project Co management fees.
- 5.3 The rough-in of the Durham Regional Police Services radio communications systems conduits shall be completed in accordance with the Police Systems Design Development Documents and shall be completed on or before one hundred and twenty (120) days prior to the Planned Completion Date.

- 5.4 Any adjustments to unspent (or shortfall) portions of the Police Systems Cash Allowance Amount will be verified and reconciled by the Independent Certifier after the Completion Date.
- 5.5 Project Co shall be entitled to receive a management fee in respect of the rough-in of the Durham Regional Police Services radio communications systems conduits as described in this Section 5.0. Payment for Project Co's management fee shall be **[REDACTED]**% of the Police Systems Cash Allowance expended by Project Co (excluding any management fees paid or payable to Project Co in respect of services provided under this Section 5.0).
- 5.6 In submitting final adjustments of this Police Systems Cash Allowance to the Independent Certifier for reconciliation (which shall be no later than ten (10) days after the Completion Date), Project Co shall include duplicate summary statements and copies of receipted invoices, quotations or signed time sheets from subcontractors substantiating expenditures in respect of the rough-in of the Durham Regional Police Services radio communications systems conduits under the Police Systems Cash Allowance. The Independent Certifier shall reconcile the Police Systems Cash Allowance in accordance with Section 5.4 above within twenty (20) days after receipt from Project Co of the applicable invoices.
- 5.7 The Police Systems Cash Allowance for the rough-in of Durham Regional Police Services radio communications systems conduits at the Project Facilities as described in this Section 5.0 (including all related Project Co management fees) is Cdn.\$**[REDACTED]** including all applicable taxes (the "**Police Systems Cash Allowance Amount**").

## **6.0 ENVIRONMENTAL CONSULTANT CASH ALLOWANCE**

- 6.1 This Section 6.0 applies only to the payment for services of the Environmental Consultant, as such services are required to be performed from time to time pursuant to the requirements set forth in the Agreement and in the Undertakings. Both prior to and after Completion, the City will engage the Environmental Consultant to provide certain ongoing services relating to the design and construction of the courthouse building located on the Site as it relates to the functionality of the Environmental Barrier. The costs of the Environmental Consultant will be borne by HMQ.
- 6.2 Project Co shall include in its project costs (which will form part of the Monthly Service Payments (as they may be adjusted based on a determination by the Independent Certifier as set forth in Sections 6.4 and 6.5 of this Schedule)) the Environmental Consultant Cash Allowance Amount.
- 6.3 Upon receipt of invoices from time to time by Project Co in respect of the services provided by the Environmental Consultant to the City, Project Co shall pay the applicable amount, from time to time, from the Environmental Consultant Cash Allowance to HMQ.

- 6.4 Any adjustments to unspent (or shortfall) portions of the Environmental Consultant Cash Allowance Amount will be verified and reconciled by the Independent Certifier after the Completion Date, for so long as the Independent Certifier is retained, and thereafter, as a result of the ongoing services provided by the Environmental Consultant, will be verified and reconciled by the PMOC once all services to be provided by the Environmental Consultant are complete.
- 6.5 In submitting adjustments of this Environmental Consultant Cash Allowance to the Independent Certifier for reconciliation (which shall be no later than ten (10) days after the Completion Date in respect of services provided by the Environmental Consultant prior to Completion) and to PMOC (where the Independent Certifier is no longer retained), Project Co shall include duplicate summary statements and copies of receipted invoices, substantiating services and expenditures of the Environmental Consultant. The Independent Certifier or PMOC, as the case may be, shall reconcile the Environmental Consultant Cash Allowance in accordance with Section 6.4 above within twenty (20) days after receipt from Project Co of the applicable invoices.

6.6 **Environmental Consultant Cash Allowance Amount**

The Environmental Consultant Cash Allowance for the Environmental Consultant's services and expenditures, as more particularly described in the Agreement and in the Undertakings as described in this Section 6.0 is Cdn.\$[REDACTED], including applicable taxes (the "**Environmental Consultant Cash Allowance Amount**").

**7.0 LAND PURCHASE CASH ALLOWANCE**

- 7.1 This Section 7.0 applies only to the payment related to the purchase by the City of the lands forming part of the Site. Project Co shall, immediately, and in any event within one (1) Business Day upon HMQ providing Project Co with documentation confirming purchase of the lands forming part of the Site by the City, provide the City with the lesser of (i) the Land Purchase Cash Allowance Amount; and (ii) an amount determined by HMQ, as notified to Project Co.
- 7.2 Project Co shall include in its project costs (which will form part of the Monthly Service Payments (as they may be adjusted based on a determination of the Independent Certifier as set forth in Sections 7.3 and 7.4 of this Schedule)) the Land Purchase Cash Allowance Amount.
- 7.3 Any Adjustments to unspent (or shortfall) portions of the Land Purchase Cash Allowance Amount will be verified by the Independent Certifier after the Completion Date.
- 7.4 In submitting final adjustments of the Land Purchase Cash Allowance to the Independent Certifier for reconciliation (which shall be no later than ten (10) days after the Completion Date), HMQ shall include documentation confirming the purchase of the lands forming part of the Site by the City, including the purchase price thereof. The Independent Certifier shall reconcile the Land Purchase Cash

Allowance in accordance with Section 7.3 above within twenty (20) days after receipt from HMQ of the applicable documentation.

- 7.5 The Land Purchase Cash Allowance for the purchase of lands to form part of the Site as described in this Section 7.0 is Cdn.\$[REDACTED], including applicable taxes (the "**Land Purchase Cash Allowance Amount**").

## **8.0 ART AND ARTIFACT CASH ALLOWANCE**

- 8.1 This Section 8.0 applies to the design, fabrication and installation by Project Co at the Project Facilities of the display systems and art and artifacts for MAG and HMQ in accordance with the requirements of MAG and HMQ, as discussed with Project Co during the Design Development Stage (the "**Art and Artifact Requirements**"). A list of the MAG and HMQ artifacts and art will be provided by HMQ to Project Co no later than 6 months prior to the Planned Completion Date.
- 8.2 The Art and Artifact Cash Allowance includes the design, fabrication and installation by Project Co at the Project Facilities of MAG and HMQ display systems, art and artifacts in accordance with the Art and Artifact Requirements. Project Co shall include in its project costs (which will form part of the Monthly Service Payments (as they may be adjusted based on a determination of the Independent Certifier as set forth in Sections 8.6 and 8.7 of this Schedule)) the Art and Artifact Cash Allowance Amount.
- 8.3 The Art and Artifacts Cash Allowance includes (i) the cost to Project Co to perform the design, installation and fabrication of MAG and HMQ display systems, art and artifacts at the Project Facilities in accordance with the Art and Artifact Requirements; and (ii) the Project Co management fees.
- 8.4 The design, installation and fabrication of MAG and HMQ display systems, art and artifacts at the Project Facilities shall be completed in accordance with the Art and Artifact Requirements and shall be carried out by Project Co concurrently with the move-in at the Project Facilities by MAG of MAG and Non-MAG Occupants, as such move-in dates are notified by HMQ to Project Co.
- 8.5 Any adjustments to unspent (or short fall) portions of the Art and Artifacts Cash Allowance will be verified and reconciled by the Independent Certifier after completion of the installation at the Project Facilities of the MAG and HMQ display systems, art and artifacts in accordance with Section 8.4.
- 8.6 Project Co shall be entitled to receive a management fee in respect of the design, fabrication and installation by Project Co at the Project Facilities of MAG and HMQ display systems, art and artifacts as described in this Section 8.0. Payment for Project Co's management fee shall be [REDACTED]% of the Art and Artifact Cash Allowance expended by Project Co (excluding any management fees paid or payable to Project Co in respect of services provided under this Section 8.0).

- 8.7 In submitting final adjustments of this Art and Artifact Cash Allowance to the Independent Certifier for reconciliation (which shall be no later than ten (10) days after installation of all HMQ and MAG display systems, art and artifacts at the Project Facilities are completed by Project Co), Project Co shall include duplicate summary statements and copies of receipted invoices, quotations or signed time sheets from subcontractors substantiating expenditures in respect of the design, fabrication and installation by Project Co at the Project Facilities of MAG and HMQ display systems, art and artifacts under the Art and Artifact Cash Allowance. The Independent Certifier shall reconcile the Art and Artifact Cash Allowance in accordance with Section 8.5 above within twenty (20) days after receipt from Project Co of the applicable invoices.
- 8.8 The Art and Artifact Cash Allowance for the design, fabrication and installation by Project Co at the Project Facilities of MAG and HMQ display systems, art and artifacts as described in this Section 8.0 (including all related Project Co management fees) is Cdn.\$[REDACTED] including all applicable taxes (the “**Art and Artifact Cash Allowance Amount**”).

#### **9.0 PERIMETER SECURITY BARRIER CASH ALLOWANCE**

- 9.1 This Section 9.0 applies only to, and the Perimeter Security Barrier Cash Allowance only includes, the construction costs (including Direct Costs) related to the construction of the Perimeter Security Barrier including a combination of structural bollards, concrete benches and other hard landscape elements on Bond Street, Division Street and Courthouse Road and within the Courthouse Plaza and such other perimeter security features as are identified by MAG and developed further in cooperation by MAG and Project Co during the Schematic Design Stage and the Design Development Stage.
- 9.2 Project Co shall include in its project costs (which will form part of the Monthly Service Payments (as they may be adjusted based on a determination of the Independent Certifier as set forth in Section 9.3 and 9.4 of this Schedule)) the Perimeter Security Barrier Cash Allowance Amount.
- 9.3 The construction of the Perimeter Security Barrier and other elements described in Section 9.1 of this Schedule shall be completed in accordance with the requirements of MAG and HMQ and agreed to by Project Co, in each of the foregoing cases, acting reasonably, and shall be carried out by Project Co prior to Completion.
- 9.4 Any adjustments to unspent (or short fall) portions of the Perimeter Security Barrier Cash Allowance will be verified and reconciled by the Independent Certifier after the Completion Date.
- 9.5 In submitting adjustments of the Perimeter Security Barrier Cash Allowance to the Independent Certifier for reconciliation (which shall be no later than ten (10) days after the Completion Date), Project Co shall include duplicate summary

statements and copies of invoices substantiating expenditures. The Independent Certifier shall reconcile the Perimeter Security Barrier Cash Allowance in accordance with Section 9.4 above within twenty (20) days after receipt from Project Co of the applicable invoices.

- 9.6 The Perimeter Barrier Cash Allowance Amount is Cdn.\$[REDACTED], including all applicable taxes (the "**Perimeter Security Barrier Cash Allowance Amount**").
- 9.7 If the construction of the Perimeter Security Barrier results in any revision to the costs to Project Co to provide the Service Period Works from that identified in Project Co's RFP-2 Proposal, then the parties shall treat such revised costs as an HMQ Change.

## **10.0 GENERAL**

- 10.1 Project Co shall, at all times, act solely as a consultant of HMQ when arranging for the purchase of New MAG FF&E and A/V Equipment and Project Co and HMQ acknowledge and agree that no agency relationship between HMQ, MAG and/or Project Co is created or established in connection with performing such functions.
- 10.2 Any unspent portions of the A/V Cash Allowance Amount, the Police Systems Cash Allowance Amount, the Environmental Consultant Cash Allowance Amount, the Land Purchase Cash Allowance Amount, the Perimeter Security Barrier Cash Allowance Amount, the Art and Artifact Cash Allowance Amount, as determined after the Completion Date by the Independent Certifier in accordance with the terms of this Schedule shall be (i) applied to reduce the Monthly Service Payments; or (ii) paid to HMQ by way of lump sum payment, in a manner to be agreed to between HMQ and Project Co, each acting reasonably.



## Appendix 1

### New MAG FF&E

- I. New MAG FF&E for the following Components, as identified in the Facilities Program set forth in Part I: Design Requirements of **Schedule B (Project Works)** of the Agreement will be funded from the FF&E Budget:
  - (a) All of Component A except the following spaces which will be funded by the Non-MAG Occupants: A112, A113, A114, A115, A207, A310, A311, A609 and A801-A810;
  - (b) All of Component B;
  - (c) All of Component C;
  - (d) All of Component D except the following space which will be funded by the Non-MAG Occupants: D501;
  - (e) All of Component F;
  - (f) All of Component G;
  - (g) All of Component J except the following spaces which will be funded by Project Co: J201 and J202; and
  - (h) All of K except the following spaces: K301 – K306 which will be funded by Project Co
- II. For informational purposes only, the following is a list of the types of items that will be included as New MAG FF&E. The list is not a definitive list and New MAG FF&E items subject to this Schedule may change.
  - (a) Judicial Suite
  - (b) Retiring Room/JP Office Suite
  - (c) Office Suite – K17 & K17A
  - (d) Office Suite – K18
  - (e) Interview Room /Day Office – G15A

Items (a) – (e) to include:

- desk/credenza/computer table or free-standing workstation with overhead storage, ergonomic chair, sled based guest chairs, task lighting, filing cabinets/book shelves, keyboard tray, desk accessories (including desk pad, paper trays, and miscellaneous accessories)
- where applicable: soft seating, side/end tables

- (f) Desk (i.e. In Crown Resolution Room) (includes ergonomic chair)
- (g) Workstation K4A (2.8 sq. metres)
- (h) Workstation K4B (4.5 sq. metres)
- (i) Workstation K4C (5.6 sq. metres)
- (j) Workstation K4D (6.7 sq. metres)

Items (g) – (j) to include:

- Workstation with pedestals and overhead storage, ergonomic chair, keyboard tray, task lighting, desk accessories (including paper trays and miscellaneous accessories)
- (k) Sofa (3 seater)
- (l) Soft Chair
- (m) End/Side Table
- (n) Lamps
- (o) Meeting Room Table (assume seating for 8 people as an average size)
- (p) Lunch Room Table (assume seating for 4 people)
- (q) Judicial Chair for the Courtroom
- (r) Ergonomic Chairs for the Courtroom (for court clerk, registrar, court reporter, jurors)
- (s) Sled based Chairs for the Courtroom (for Crowns, counsel, police, CSO)
- (t) Ergonomic Chairs (miscellaneous)
- (u) Sled Based Chairs (interview rooms, meeting rooms, lunchrooms)
- (v) File Cabinets - 36" wide, 5 drawers high
- (w) High Density Mobile File Unit – 36" wide
- (x) High Density Mobile File Unit – 42" wide
- (y) Lektrievers – 131" wide, 9' high
- (z) Storage Cabinets (supplies, miscellaneous small equipment, medicine cabinet)
- (aa) Tape Storage Cabinets (for court reporter tapes/discs)

- (bb) Line Control Stanchions
- (cc) Pamphlet Holders
- (dd) Forms Holders
- (ee) Safe
- (ff) Resting Bed
- (gg) Magnetometers
- (hh) Baggage X-ray machines
- (ii) Miscellaneous:
  - Foot rests
  - Coffee makers
  - Microwave
  - Kettle
  - Art
  - Plants
  - Dishes, cutlery, etc.

**Non-MAG Occupant FF&E**

Non-MAG Occupant FF&E for the following Components will be funded by the Non-MAG Occupants:

- (a) All of Component E; and
- (b) All of Component H.

**SCHEDULE B  
PART V  
DRAFT INDEPENDENT CERTIFIER'S CONTRACT**

**THIS AGREEMENT** is made as of the ● day of ●, 2007

**BETWEEN:**

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent  
for HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

("HMQ")

**AND:**

**ACCESS JUSTICE DURHAM LTD.**, a corporation incorporated under the laws of Ontario

("Project Co")

**AND:**

[●], a corporation incorporated under the laws of [Ontario]

(the "**Independent Certifier**")

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, Project Co and HMQ wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment and to perform certain services in connection with the Project Agreement.
- C. HMQ, Project Co and the Independent Certifier wish to enter into the Independent Certifier's Contract 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 HMQ, Project Co and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HMQ, Project Co and the Independent Certifier covenant and agree as follows:

**1. Interpretation**

- (1) In this Independent Certifier's Contract,

- (a) "**Agreement**" means this Independent Certifier's Contract, as it may be amended from time to time in accordance with the terms hereof;
- (b) "**Commissioning Fine Tuning Period**" has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Stage, Construction Documents Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Project Agreement;
- (c) "**Contract Material**" means all electronic, print or other reports, manuals, studies, opinions, certifications, instructions, applications, technical information, plans, charts, drawings, calculations, tables, schedules and other representations of data and other information, however stored or recorded, and all equipment necessary for the presentation thereof in intelligible form,
  - (i) provided to the Independent Certifier or created or required to be created by or on behalf of HMQ or Project Co; or
  - (ii) provided or created by the Independent Certifier or used by it directly or indirectly in performing its Functions;
- (d) "**Fee**" means any and all fees payable to the Independent Certifier under or by virtue of this Agreement with respect to the performance of its Functions which includes, in respect of the Functions identified in Part I of Schedule 1 to this Agreement only, all costs, expenses and disbursements of the Independent Certifier and excludes, in respect of the Functions identified in Part II of Schedule 1 to this Agreement, all costs, expenses and disbursements of the Independent Certifier, in each case, as such fees are specified and made payable in accordance with Part I and Part II of Schedule 1 to this Agreement;
- (e) "**Functions**" means (i) all of the functions and obligations of the Independent Certifier conferred on the Independent Certifier under this Agreement, including the functions described in Schedule 2 to this Agreement; (ii) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier; and (iii) all other obligations or tasks which the Independent Certifier must do to comply with its obligations under this Agreement, in each case, subject to any Modification made under this Agreement from time to time, and for greater certainty, "Functions" shall include the certification of Substantial Performance;
- (f) "**Intellectual Property**" means any trade secret, confidential information, or patent, trade mark, industrial design, copyright or other right recognized as being a form of intellectual property under the laws of Ontario;
- (g) "**Modification**" means any change to the Functions under section 13 of this Agreement;
- (h) "**Project Agreement**" means the Agreement entered into on March 1, 2007, including all Schedules and Appendices thereto or other documents incorporated by reference as part of that Agreement, under which Project Co undertook to

design, build, finance and operate the Project Facilities for and on behalf of HMQ; and

- (i) **"Seasonal Fine Tuning Reports"** has the meaning ascribed to it in **Schedule C (HMQ Outline Commissioning Plan)** of the Project Agreement;
- (j) **"Substantial Performance"** means substantial performance within the meaning of the *Construction Lien Act*.

(2) In this Agreement, the following rules of interpretation shall apply:

- (a) capitalized terms used herein and not otherwise defined, have the meaning ascribed to them in the Project Agreement;
- (b) a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
- (c) a reference to any Act, bylaw, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, bylaw, rule or regulation or provision enacted in substitution therefor or amendment thereof;
- (d) the headings to each section are inserted for convenience of reference only and do not form part of the Agreement;
- (e) all accounting terms have the meaning recognized by or ascribed to those terms by the Canadian Institute of Chartered Accountants;
- (f) all references to time shall be deemed to be references to current time in the City of Oshawa;
- (g) any reference to an officer of HMQ shall be construed to mean the person holding that office from time to time, and the designate or deputy of that person, and shall be deemed to include a reference to any person holding a successor office or the designate or deputy of that person;
- (h) words and abbreviations which have well-known professional, technical or trade meanings are used in accordance with such recognized meanings; and
- (i) all references to a monetary amount or to currency are references to Canadian currency.

(3) This section shall survive the termination of this Agreement.

## **2. Appointment of Independent Certifier**

- (1) HMQ and Project Co hereby appoint the Independent Certifier and the Independent Certifier hereby accepts such appointment to carry out the Functions in accordance with this Agreement. The Independent Certifier hereby agrees to submit to a criminal record name check through the Canadian Police Information Center from time to time in

accordance with the terms of **Schedule H (Background Check Requirements)** to the Project Agreement.

- (2) The Independent Certifier shall carry out the Functions in accordance with this Agreement. Where there is an inconsistency between this Agreement and the Project Agreement, the terms of this Agreement shall prevail.
- (3) Nothing in this Agreement or the Project Agreement shall be interpreted or construed to render the Independent Certifier responsible for the performance of the design or construction of the Project Facilities, or for the performance of any obligation of Project Co, or professional responsibility of any of the other professionals of record, with respect to the Project Facilities.
- (4) The Independent Certifier acknowledges that HMQ and Project Co shall each rely upon the performance of the Functions by the Independent Certifier, including all determinations and findings of fact, the expression of all opinions and conclusions, the issuance of all certificates, and accordingly, the Independent Certifier shall use its best skills and judgement in providing the Functions.

### **3. Exercise of Rights and Performance of Obligations**

- (1) Except as otherwise expressly provided in this Agreement,
  - (a) where a power, authority or discretion may be exercised by Project Co and HMQ, it shall be exercised by them jointly;
  - (b) any obligation of Project Co, HMQ or Project Co and HMQ shall be deemed to be a several obligation of Project Co and HMQ acting individually.
- (2) The Independent Certifier shall in all respects act as an independent professional. The Independent Certifier represents and warrants that it does and shall at all times during the term of this Agreement possess and exercise the standard of skill, care and diligence in the performance of the Functions that would be exercised by an expert professional experienced in providing each of the services falling within the definition of the Functions as set out in subsection 1(1) of this Agreement.
- (3) The Independent Certifier warrants in favor of each of Project Co and HMQ severally, that:
  - (a) it is and will at all times be at arm's length to each of Project Co, HMQ and the Government of Ontario within the meaning of the *Income Tax Act* (Canada), and that it has no direct or indirect material interest in or connection with and it will not at any time have any direct or indirect material interest in or connection with any person, trust, partnership, joint venture or other entity that is not at arm's length to Project Co, HMQ or the Government of Ontario;
  - (b) it has no and will not at any time have any direct or indirect material interest in and it will not at any time have a direct or indirect interest in the certification of

Completion with respect to the Project Facilities except with respect to the performance of its Functions under this Agreement and the payment of its Fee;

- (c) other than as expressly set out in this Agreement or the Project Agreement, it has and will not at any time have authority to give any directions to HMQ or Project Co or any of their respective officers, directors, members, employees, contractors, consultants or agreements;
- (d) it has no authority to, and will not at any time have any 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 HMQ and Project Co in writing;
- (e) it shall act in accordance with the joint direction of HMQ and Project Co provided that the directions are not inconsistent with the other terms of this 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 judgement under this Agreement;
- (f) it is not aware of any other circumstances or relationship, having made due inquiries with respect thereto, that could reasonably be perceived to constitute a conflict of interest with respect to the performance of the Functions, or its role as Independent Certifier; and
- (g) at the date of signing this Agreement, no conflict of interest will arise in the performance of its obligations under this Agreement.

The Independent Certifier covenants in favor of each of Project Co and HMQ severally, that it shall continuously comply with subsections 3(3)(a) and (b) of this Agreement so long as it is serving as the Independent Certifier under this Agreement.

- (4) Where at any time and for any reason, it is determined by the Independent Certifier that a conflict of interest has arisen or is likely to arise, or there is a reasonable apprehension that a conflict of interest has arisen or may arise, the Independent Certifier shall immediately notify Project Co and HMQ in writing of that fact, and shall take such steps as either of them may require to avoid that conflict of interest, or (where it is not possible to avoid that conflict) to mitigate that conflict to the greatest extent possible, or (where it is not possible to avoid that conflict, and Project Co and HMQ jointly requests) resign.
- (5) This section shall survive the termination of this Agreement to the extent that it is necessary to give effect to this section.

#### **4. Exercise of Independent Judgment**

- (1) In performing all Functions under this Agreement, the Independent Certifier shall
  - (a) act impartially and independently of Project Co and HMQ, giving fair consideration to the interests and views of each in accordance with the terms of the Project Agreement and this Agreement;



- (b) act reasonably, honestly and professionally in all respects, and in accordance with the highest standards of commercial integrity; and
  - (c) perform or otherwise carry out the Functions in a timely manner in accordance with the terms prescribed in the Project Agreement and this Agreement including, without limitation, Section 12 hereof.
- (2) All determinations of fact and the drawing of conclusions based upon any facts so determined shall be made in the exercise of the Independent Certifier's independent professional judgment. In carrying out its responsibilities under subsection 4(1)(a) of this Agreement, the Independent Certifier shall take into account the representations and information provided by Project Co, HMQ and their respective professional advisors and consultants. The Independent Certifier shall not be bound to comply with any representation, request or direction, nor shall it be bound to accept the accuracy of opinion or information provided by any of Project Co, HMQ or their respective professional advisors and consultants.
  - (3) Despite subsection 4(2) of this Agreement, the Independent Certifier shall accept all agreed statements of fact made by Project Co and HMQ jointly.
  - (4) This section shall survive the termination of this Agreement to the extent that it is necessary to give effect to this section.

**5. How Functions to Be Performed, Knowledge of Transaction, etc.**

- (1) The Independent Certifier shall cooperate fully with Project Co and HMQ and coordinate with each of them the performance of the Functions so as to avoid unreasonable interference with, or the disruption or delay of, the Project Works, Completion of the Project Facilities, Courthouse Functionality and Courthouse Activities.
- (2) Project Co and HMQ shall each respectively cooperate with each other and the Independent Certifier with respect to the performance of the Functions and provide such reasonable assistance as the Independent Certifier may request with respect to each aspect of the HMQ Outline Commissioning Plan and the Project Co Commissioning Program and the determination of Completion. Neither Project Co nor HMQ shall in any way obstruct or otherwise impede or interfere with the performance of the Functions by the Independent Certifier.
- (3) Project Co and HMQ shall each make available to the Independent Certifier as soon as practicable, all documents and other information necessary for the performance of the Functions or that are otherwise relevant to any determination that is to be made by the Independent Certifier. Project Co and HMQ shall also each make available to the Independent Certifier any additional information that may reasonably be requested by the Independent Certifier. Where any such additional information is requested, and is not provided within ten (10) Business Days of the date on which it was requested, then the Independent Certifier shall notify the other party of the details of the information required, and explain the need for that information to be provided by the other party. Any failure or refusal to provide such information shall be referred to the Dispute Resolution Procedure.

- (4) Upon reasonable notice to Project Co, the Independent Certifier (and any other person authorized by the Independent Certifier) may enter and inspect the Site, the Project Facilities and all work being done on it and materials being supplied to it. This right of inspection may be exercised at any reasonable time and at all times during normal work hours on the Site. The right of inspection is subject to the following conditions:
  - (a) the person carrying out the inspection shall observe all reasonable rules of Project Co or the Construction Subcontractor with respect to safety and security;
  - (b) no person involved in the inspection shall:
    - (i) act so as to cause any unreasonable delay to Project Co in carrying out work with respect to the Project Facilities; or
    - (ii) cause any damage to the Project Facilities or to any materials on the Site awaiting installation or assembly or to any tools, vehicles or equipment of any person that are for the time being on the Site.
- (5) Neither Project Co nor HMQ is relieved from its obligations to perform their respective obligations under the Project Agreement at the time and in the manner contemplated in the Project Agreement by reason of the appointment of or the performance or non-performance of the Functions by the Independent Certifier.
- (6) The Independent Certifier covenants that it will inform itself fully of all requirements that may be set out in any other Contract Material and other documents as they become available from time to time, that are relevant to the performance of the Functions;
- (7) The Independent Certifier warrants that:
  - (a) it is fully aware of the requirements of the Project Agreement and that it has received a copy of the Project Agreement;
  - (b) it possesses all requisite skills and training necessary or reasonably advisable to perform the Functions (provided that it shall be permissible for the Independent Certifier to hire consultants to assist him as the need arises in respect of specific areas of expertise however, the Independent Certifier acknowledges and agrees that it may not subcontract or hire consultants to assist him in respect of areas which are within its specific area of expertise which includes construction claims adjusting skills and construction cost consulting skills);
  - (c) it has satisfied itself as to the correctness and sufficiency of its proposal with respect to the performance of the Functions and confirms that the Fee covers all costs of compliance relating to the performance of the Functions and all other matters necessary or advisable for the due and proper performance of the obligations of the Independent Certifier under this Agreement.
- (8) Except as hereinafter provided or otherwise agreed to in writing by HMQ and Project Co, the Functions are to be performed by the Independent Certifier's internal personnel as set forth in Schedule 4 of this Agreement. In the event that external personnel are required

to perform the Functions as varied in accordance with section 13 of this Agreement, then any additional fees relating to such external personnel shall be paid by HMQ and Project Co in the same manner as the Fees.

## 6. Completion Plan

- (1) The certification of Completion shall be carried out in accordance with the terms of the Project Agreement including for certainty, in accordance with **Schedule D (Completion Certification)** and in accordance with the Completion Plan.
- (2) Approval of the Completion Plan by the Design and Construction Compliance Consultant or other HMQ Representative in accordance with the Project Agreement and in accordance with **Schedule N (Review Procedure)** of the Agreement shall not relieve the Independent Certifier of any of the Independent Certifier's responsibilities or obligations in respect of the performance of the Functions and the Independent Certifier remains solely responsible for the full performance of those responsibilities and obligations.
- (3) Subject to subsection 4(3) of this Agreement, the onus of proving, to the satisfaction of the Independent Certifier, that the Completion Criteria have been satisfied shall lie upon Project Co.

## 7. Performance and Suspension of the Functions

- (1) Subject to subsection 7(1) below, the performance of the Functions (or any part thereof) by the Independent Certifier may be suspended at any time by Project Co and HMQ acting jointly:
  - (a) if the Independent Certifier fails to comply with its obligations under this Agreement, immediately by HMQ and Project Co giving joint notice in writing to the Independent Certifier; or
  - (b) in any other case, upon HMQ and Project Co giving seven (7) days' joint notice in writing to the Independent Certifier.
- (2) The performance of the Functions by the Independent Certifier may be suspended at any time by HMQ where any of the events specified in paragraphs 7(c) through and including 7(f) of **Schedule H (Background 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 HMQ in writing within five (5) Business Days of the occurrence of any of the events described in paragraphs 7(c) through and including 7(f) of **Schedule H (Background Check Requirements)** of the Project Agreement in respect of such IC Representative; or (ii) the Independent Certifier has satisfied HMQ, 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 Functions.
- (3) Where the performance of the Functions is suspended under subsection 7(1)(a), the Independent Certifier shall be entitled to all Fees earned up to the time when notice of suspension was received, plus any extra costs incurred by the Independent Certifier by

reason of the suspension (such extra costs to be determined in accordance with the Modification procedure set out in section 13 of this Agreement); however the Independent Certifier shall not be entitled to be paid any costs, expenses, losses (whether direct or indirect) or damages arising from a suspension under Subsection 7(1)(a).

- (4) HMQ and Project Co may at any time require the Independent Certifier to recommence the performance of the Functions by giving joint written notice to that effect to the Independent Certifier. Where such a joint notice is received by the Independent Certifier, it shall immediately recommence the performance of the Functions in accordance with the original Completion Plan and otherwise in accordance with the terms of the Agreement in respect of Project Works to be performed after Completion and not otherwise specified in the Completion Plan subject to such changes as to times and milestones as may be necessary or advisable by reason of the suspension and which are agreed to in writing by HMQ and Project Co;

## **8. Insurance**

### **(1) Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place:
- (i) professional liability insurance:
    - (A) covering liability related specifically to the Project and in the amount of \$[REDACTED] per claim with a \$[REDACTED] policy aggregate and includes a project specific limit where available from insurers, and a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to HMQ and Project Co; 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 HMQ and Project Co, or either of them, under or in connection with this Agreement and the provision of the Functions;
  - (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 HMQ and Project Co; and
- (b) The Independent Certifier must provide copies of its insurance policies to HMQ and Project Co upon request.

**(2) Workers' Compensation Insurance**

The Independent Certifier must, at its own cost, 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 Functions.

**9. Fees**

- (1) In consideration of the performance by the Independent Certifier of the Functions in accordance with this Agreement, HMQ and Project Co shall each pay the Independent Certifier one-half of the Fees (including all disbursements, costs and expenses not forming part of the Fees) provided for in Schedule 1 of this Agreement in accordance with a payment schedule specified in Schedule 1 of this Agreement. For greater certainty, the obligation of each of HMQ and Project Co to pay one-half of the Fee (including all disbursements, costs and expenses not forming part of the Fees) to the Independent Certifier is a several obligation, and neither Project Co or HMQ shall have any liability whatsoever for any non- payment by the other party of any fees or costs payable by such other party under this Agreement.
- (2) Where any amount of the Fees are due and payable under subsection (1) of this Agreement but have not been paid, the Independent Certifier shall not be obliged to complete any certification or other Functions, as the case may be, until such time as that payment is made. A default in payment by either Project Co or HMQ shall be subject to the Dispute Resolution Procedure as set out in the Project Agreement.
- (3) The termination of this Agreement shall not reduce or otherwise prejudice the right of the Independent Certifier to its Fees as provided in Schedule 1 of this Agreement.
- (4) The Fees include all taxes (except Goods and Services Tax). The fees set forth in Part I of Schedule 1 are inclusive of disbursements, overheads, profit and all other costs of the Independent Certifier to perform the applicable Functions referenced therein. The fees set forth in Part II of Schedule I are not inclusive of disbursements and other costs of the Independent Certifier to perform the applicable Functions referenced therein.

**10. No Liability**

On no account shall Project Co or HMQ be liable to each other or to any other person for any act of or omission by the Independent Certifier, whether under or purportedly under a provision of this Agreement or the Project Agreement, except to the extent that the inability of the Independent Certifier to perform the Functions is the result of deliberate or negligent wrong-doing of Project Co or HMQ, as the case may be. This section shall survive the termination of this Agreement.

**11. Communications**

- (1) All communications among the parties or between any two of them with respect to the performance of the Functions shall be in writing.

- (2) All instructions to the Independent Certifier by HMQ and Project Co shall be given in writing and accepted or endorsed by both HMQ and Project Co.
- (3) Where the Independent Certifier delivers a report, communication, certificate or other document to Project Co or HMQ, it shall simultaneously provide a copy thereof to the other party. Where Project Co or HMQ delivers an application, report, communication, certificate or other document to the Independent Certifier, that party shall simultaneously provide a copy thereof to the other party.
- (4) This section shall survive the termination of this Agreement.

## **12. Default Time Limit for Performance of Functions**

Subject to subsection 13(4) of this Agreement and section 4.10 of the Project Agreement or otherwise expressly provided in the Project Agreement, where no time limit is prescribed for the performance of a Function, the Function, shall be deemed to be subject to a time limit of ten (10) Business Days, commencing on the day that either HMQ or Project Co, or both, request or demand the performance of that Function.

## **13. Modifications and Directions**

- (1) From time to time, HMQ and Project Co may jointly agree between themselves that the Functions of the Independent Certifier shall be varied in accordance with this section 13. In such a case, HMQ and Project Co shall issue a "Modification Price Request" to the Independent Certifier setting out details of a proposed Modification. Within five (5) Business Days after the receipt of a Modification Price Request, the Independent Certifier shall provide to the HMQ Representative and Project Co a written notice setting out the Independent Certifier's proposed adjustment to its Fee for performing the Modification.
- (2) At any time within the five (5) Business Day period immediately following receipt by each of HMQ's Representative and Project Co respectively of the Independent Certifier's proposed adjustment to its Fee with respect to the proposed Modification (as set out in subsection 13(1) of this Agreement), they may jointly
  - (a) direct the Independent Certifier to carry out the Modification by giving a joint written notice to that effect, in which case the Fee shall be adjusted in accordance with such Independent Certifier's notice;
  - (b) cancel the Modification Price Request and the proposed Modification; or
  - (c) issue an amended Modification Price Request to the Independent Certifier setting out details of an alternative proposed Modification, in which case the provisions of this subsection shall apply to that proposed alternative in like manner.

Where HMQ's Representative and Project Co do not jointly take one of the steps provided in subsections 13(2)(a), (b) or (c) of this Agreement within the five (5) Business Day period immediately following receipt by each of them, respectively, of the Independent Certifier's proposed adjustment to its Fee then HMQ and Project Co shall be deemed to have agreed to proceed as provided in subsection 13(2)(a) of this Agreement.

Where this subsection applies, the time allowed for the performance of the Modification concerned under Section 12 of this Agreement shall not commence until the Fee payable with respect to that Modification has been resolved in accordance with this subsection.

- (3) From time to time, HMQ and Project Co may jointly direct that Functions of the Independent Certifier shall be carried out by the Independent Certifier in the manner specified in a joint written direction provided to the Independent Certifier by HMQ and Project Co. Subject to subsection 13(4) of this Agreement, the Fees of the Independent Certifier shall not be adjusted by reason of such a direction. Irrespective of whether the Independent Certifier considers that such a direction constitutes or involves a Modification, the Independent Certifier shall continue to perform all other Functions in accordance with this Agreement and all other directions, including any direction in respect of which notice has been given under subsection 13(2).
- (4) Where a direction is given by HMQ and Project Co pursuant to subsection 13(3) of this Agreement, and the Independent Certifier believes that the direction in question constitutes or involves a Modification of the Functions that the Independent Certifier is to perform, then
  - (a) at any time within the five (5) Business Day period immediately following receipt of that direction, the Independent Certifier shall give notice to HMQ and Project Co that it considers the direction constitutes or involves a Modification; and
  - (b) within five (5) Business Days after giving the notice under subsection 13(4)(a) of this Agreement, the Independent Certifier shall submit a written claim to the designated representatives of each of HMQ and Project Co, detailing therein particulars of the claim, the amount of the claim and how it was calculated, and offering to them the Independent Certifier's proposed adjustment to its Fee for performing the Modification.

If the Independent Certifier complies with this subsection, then subsection 13(2) of this Agreement shall apply. If the Independent Certifier fails to comply with subsection 13.4 of this Agreement, the Fee, will not be adjusted as a result of the direction, and the Independent Certifier shall perform its Functions in the manner so directed.

- (5) Where subsection 13(4) of this Agreement applies, then if the parties to this Agreement agree that the direction does constitute a Modification, then the Fees of the Independent Certifier shall be adjusted in accordance with this section 13, and the direction shall be carried out;
- (6) Any reductions in the Fee will be calculated on the same basis as any increases.

#### **14. Term and Termination**

- (1) Subject to earlier termination, this Agreement will commence on the date of the Project Agreement and continue in full force until: (i) the completion of the Project Works and performance of the Functions set forth herein; or (ii) such other date as may be agreed among the parties.

- (2) Project Co and HMQ may jointly terminate this Agreement and the appointment of the Independent Certifier as the Independent Certifier for the Project Agreement, where the Independent Certifier is in a breach of this Agreement, and fails to rectify that breach within five (5) Business Days of a demand being made to that effect by Project Co or HMQ. Any such termination shall be without prejudice to any other rights of HMQ and Project Co respectively.
- (3) HMQ may, in its sole discretion, terminate this Agreement and the appointment of the Independent Certifier for the Project Agreement where any of the events specified in paragraphs 7(c) through and including 7(f) of **Schedule H (Background 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 HMQ in writing within five (5) Business Days of the occurrence of any of the events described in paragraphs 7(c) through and including 7(f) of **Schedule H (Background Check Requirements)** of the Project Agreement; or (ii) the Independent Certifier has satisfied HMQ, 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 Functions.
- (4) Project Co and HMQ may jointly terminate this Agreement and the appointment of the Independent Certifier as the Independent Certifier for the Project Agreement, where
  - (a) they are of the reasonable opinion that by reason of the Independent Certifier's insolvency or other circumstances it is unable or is likely to be unable to perform the Functions in a timely or competent manner; or
  - (b) they so elect, jointly, at their sole discretion,in each case, such termination to take effect as of the date set forth in the joint notice of termination.
- (5) Upon termination of this Agreement under subsection 14.4(b), the Independent Certifier shall be entitled to be reimbursed by HMQ and Project Co for the value of all Functions performed by it to the date of termination; but otherwise shall not be entitled to any damages or other compensation in respect of the termination, including (without limitation) any amount in respect of (i) the lost opportunity to earn a profit in respect of any Functions not then performed; or (ii) any lost opportunity to recover overheads from the turnover which would have been generated under the Project Agreement or this Agreement but for it being terminated.
- (6) Upon completion of the Independent Certifier's engagement under this Agreement or earlier termination of this Agreement, the Independent Certifier shall:
  - (a) co-operate with HMQ and Project Co with respect to the transition of the Functions to a replacement certifier;
  - (b) deliver to HMQ and Project Co jointly, or to such person as they may designate, all Contract Material and all other information concerning the Project held or



prepared by the Independent Certifier during the execution of work under this Agreement; and

- (c) as and when required by Project Co and HMQ, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable those persons to perform the Functions in a timely and professional manner.
- (7) Except as otherwise expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of each of HMQ and Project Co to recover damages from the Independent Certifier).
- (8) Termination of this Agreement shall not affect the continuing rights and obligations of the parties under this section or under any section or part thereof that provides expressly that it shall survive termination or which is required to give effect to such termination or the consequences of such termination.

## **15. Indemnity**

- (1) The Independent Certifier hereby indemnifies and defends and saves harmless each of HMQ and Project Co and each of their respective affiliated entities, subsidiaries, directors, officers, employees, agents, permitted successors and assigns, completely harmless from any Direct Losses arising, directly or indirectly, in whole or in part, out of any action taken by the Independent Certifier by reason of any breach of this Agreement or any part or parts hereof by the Independent Certifier, its employees, servants or persons for whom it is in law responsible or by reason of any negligent or unlawful act or omission or wilful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible. The indemnity provided under this Section 15(1) shall not extend to the extent that any action, cause of action, suit, debt, cost, damage, expense, claim, demand or liability, relates to or is the result of any negligent or unlawful act or omission or wilful misconduct of Project Co or HMQ respectively, nor shall it extend to any debt, cost, expense, claim, demand or damages to the extent that insurance proceeds are recoverable by those parties respectively. This indemnity shall survive termination of this Agreement.
- (2) HMQ and Project Co hereby indemnify and defend and save harmless the Independent Certifier from any Direct Losses 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. The indemnity provided under this Section 15(2) shall not extend to any material breach of any of the terms of this Agreement or any negligent or unlawful act or omission or wilful misconduct of the Independent Certifier or any of its employees, servants, agents or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify HMQ and Project Co, as referred to in Section 15(1)), and shall not extend to any action taken by the Independent Certifier outside the scope of authority set forth in this Agreement or any part thereof and shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable

by the Independent Certifier. This indemnity shall survive termination of this Agreement.

- (3) Notwithstanding any other provision in this Agreement, without prejudice to the parties' rights in respect of payments provided for herein, the indemnities under this Agreement shall not apply and there shall be no right to claim, directly or indirectly, damages for breach of this 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**").

- (4) This Section 15(4) 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 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**".
- (a) If the Beneficiary has suffered or is likely to suffer any Direct Losses or receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to be indemnified under this Section 15, and in respect of which the Beneficiary intends to make a claim for indemnification, the Beneficiary shall notify the Indemnifier as soon as reasonably practicable and in any event within ten (10) Business Days of becoming aware of same. Such notice shall specify in reasonable detail the nature of the matter and, so far as known, the amount which may be claimed.
  - (b) Subject to Sections 15(4)(d) and 15(4)(e), 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 the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary.

- (c) Following notification of any matter pursuant to Section 15(4):
- (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) subject to Sections 15(4)(c)(iv) to 15(4)(c)(vii), the Indemnifier may elect to be responsible for dealing with such matter, including having the conduct of any proceedings and incidental negotiations;
  - (iv) the Indemnifier may not pay, admit liability, compromise or settle any claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (v) provided that the Indemnifier shall notify the Beneficiary upon becoming aware of such a requirement, the Indemnifier shall take any action required under the terms of any relevant policy of insurance by any insurer of the risk underlying such matter, to dispute such matter or enforce rights against any third party;
  - (vi) the Indemnifier shall use all commercially reasonable efforts to ensure prompt settlement of any relevant claim under any policy of insurance;
  - (vii) any assessment as to whether or not any condition of, delay in or withholding of consent for the purposes of this Section 15(4)(c) is reasonable, shall have regard to matters of public policy affecting the Province Persons, as well as commercial considerations and all other relevant circumstances; and
  - (viii) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under a release given by the person bringing the claim to which this Section 15(4) applies.
- (d) 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 Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 15(4)(b);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within ten (10) Business Days of the notice from the Beneficiary under Section 15(4) 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 15(4)(c).

- (e) 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 15(4)(b) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where HMQ (including each of its affiliated entities, subsidiaries, directors, officers, employees, agents and permitted successors and assigns) is the Beneficiary, HMQ may retain or take over such conduct in any matter involving judicial confidentiality 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 15(4)(e), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
  - (f) 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.
  - (g) Any person taking any of the steps contemplated by this Section 15(4) 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 Agreement.
- (5) HMQ, Project Co and the Independent Certifier shall at all times take all 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 Agreement. The immediately preceding sentence applies to any indemnity given under this Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with the immediately preceding sentence.

- (6)
- (a) The maximum liability of the Independent Certifier in respect of all claims (or series of claims arising as a result of any single event or series of interrelated events) under Sections 15(1) shall not exceed the greater of (i) \$[REDACTED] (indexed); and (ii) the amount of insurance proceeds the Independent Certifier is entitled to receive pursuant to the insurance it is required to maintain in accordance with Section 8(1) of this Agreement. The maximum aggregate liability of Project Co and HMQ in respect of all claims under Section 15(2) shall not exceed \$[REDACTED] (indexed). Each of these limits shall be index linked and shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained by the parties. The maximum liability set out herein shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Nothing in this Section 15(6) shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the parties under (i) any other provision of this Agreement other than Sections 15(1) and 15(2); and/or (ii) any other agreement between HMQ, Project Co and the Independent Certifier relating to the Project; and/or (ii) any other agreement between Project Co and the Independent Certifier in respect of any project.
- (7) Subject to the indemnities provided herein, HMQ, the Province Persons, Project Co and the Project Co Parties shall not be liable in tort, strict liability or otherwise to the Independent Certifier, and shall not be liable in tort, strict liability or otherwise to HMQ, any Province Person, Project Co or any Project Co Party in respect of any negligent act or omission of any such person relating to or in connection with this Agreement and no such person shall bring such a claim.
- (8) Notwithstanding any other provision of this Agreement, neither party shall be entitled to receive compensation or make a claim under this 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 Agreement, or otherwise.
- (9) This section shall survive the termination of this Agreement.

## **16. Independent Certifier Personnel**

The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Functions and, in particular, will not, for the duration of this 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 HMQ and Project Co, such involvement would have a material adverse effect on the performance of the Functions.

**17. Entire Agreement**

This Agreement and the Project Agreement constitute the entire agreement between HMQ, Project Co and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this Agreement between the parties with respect to the subject matter of this Agreement.

**18. No Employment Relationship**

- (1) The Independent Certifier, its officers, directors, members, employees, and agents and any other persons engaged by the Independent Certifier in the performance of the Functions shall not be deemed or construed to be an employee or other person in the service or employment of HMQ or Project Co, by virtue of this Agreement or the performance of the Functions and whether generally or for any special purpose.
- (2) The Independent Certifier shall be exclusively responsible for all obligations and other matters requisite of an employer (if any) in relation to the Independent Certifier's officers, directors, members, employees, and agents and other persons who are engaged by the Independent Certifier, whether as independent contractors or in any other capacity.
- (3) This section shall survive the termination of this Agreement.

**19. Waiver**

No party shall be deemed to have waived any right or other entitlement to which it is entitled under this Agreement, unless that waiver is in writing and signed by that party or its duly authorized representative and delivered by such party to the other parties. This section shall survive the termination of this Agreement.

**20. Notices**

- (1) Any demand or other notice that may be given or delivered under this Agreement may be given or delivered in the manner specified in the Project Agreement and subject to the same rules as set out in the Project Agreement with respect to receipt.
- (2) Notice shall be given to each of the Parties as follows:
  - (a) in the case of Project Co:

79 Wellington Street West  
Suite 1500  
Maritime Life Tower  
P.O. Box 114  
Toronto-Dominion Centre  
Toronto, ON M5K 1G8

with a copy to:

Babcock & Brown LP  
2 Harrison Street, 6<sup>th</sup> Floor  
San Francisco CA 94105

Fax: [REDACTED]  
Attention: Treasurer

- (b) in the case of HMQ:  
c/o Ontario Infrastructure Projects Corporation

777 Bay Street, 9<sup>th</sup> Floor  
Toronto, ON M5G 2C8

- (c) in the case of the Independent Certifier:



- (3) Any party may change its address for notice by notice given to the other parties in accordance with this section 20.
- (4) Any notice:
- (a) if validly delivered, will be deemed to have been given when delivered (provided that such notice is received by the contact person noted above or such other person notified from time to time in substitution of such person, or a person authorized on their behalf);
  - (b) if validly transmitted by facsimile transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day; and
  - (c) if validly transmitted by facsimile transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

## **21. Transfer and Assignment**

- (1) The Independent Certifier:
- (a) shall not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of HMQ and Project Co, which each such party may give or withhold in its absolute discretion; and
  - (b) agrees that any assignment, transfer, mortgage, charge or encumbrance shall not operate to release or discharge the Independent Certifier from any obligation or liability under this Agreement.
- (2) For the purposes of this Agreement, an assignment will be deemed to have occurred where there is a "change in control" of the Independent Certifier after the date of this Agreement, within the meaning of the *Ontario Business Corporations Act*.

- (3) Project Co and HMQ may each assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.
- (4) Subject to the restrictions set out in this section, this Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators and permitted successors and assigns.

## **22. Governing Laws and Attornment**

- (1) This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario without regard to conflicts of law principles that would apply a different body of law.
- (2) Each of the parties hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Ontario with respect to any action, suit, proceeding or dispute in connection with this Agreement.
- (3) This section shall survive the termination of this Agreement.

## **23. Confidentiality and Freedom of Information**

- (a) The provisions of the Project Agreement with respect to confidentiality and freedom of information are hereby incorporated into this Agreement by reference and shall apply with full force to the parties to this Agreement. This section shall survive the termination of this Agreement.
- (b) In addition to Section 23(a), the Independent Certifier agrees that:
  - (i) neither it nor any of its officers, directors, members, employees, servants and agents shall disclose or otherwise make public any Contract Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of HMQ and Project Co; and
  - (ii) no Contract Material shall be used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Agreement.
- (c) HMQ and Project Co 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 Functions to give written undertakings, in the form of confidentiality agreements on terms required by HMQ and Project Co, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.



**24. No Transfer of Intellectual Property**

- (1) The Independent Certifier does not have and shall not acquire any rights, including any intellectual property, in any Contract Material provided to the Independent Certifier or created by either HMQ or Project Co in connection with the performance by the Independent Certifier of its obligations under this Agreement.
- (2) As between the Project Co, HMQ and the Independent Certifier, all title and ownership including all Intellectual Property arising, created or otherwise coming into being by reason of the performance of the Functions by the Independent Certifier or any of its officers, agents, employees, or subcontractors is hereby assigned to HMQ. In addition, to the extent that copyright may subsist therein, the Independent Certifier hereby waives all past, present and future moral rights therein.
- (3) Nothing in this section shall in any way reduce or otherwise qualify any of the intellectual property rights to which HMQ and Project Co, is entitled whether by contract or by law.
- (4) The Independent Certifier shall provide such further assurance and do all such things and execute all such documents as reasonably requested by HMQ in order to confirm or perfect the intellectual property rights of HMQ as provided in this section.
- (5) This section shall survive the termination of this Agreement.

**25. Time of the Essence**

Time shall be of the essence of this Agreement (including the performance of all of the Functions) and of any transactions contemplated by this Agreement.

**26. Amendment**

No amendment, abrogation or other change or modification of this Agreement shall be valid unless it is in writing and signed by each party.

**27. Severability**

Each provision of this Independent Certifier's Contract shall be valid and enforceable to the fullest extent permitted by Applicable Law. Where any provision of this Agreement shall be declared invalid, unenforceable or illegal by a court or other competent legal authority of any jurisdiction, that provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. This section shall survive the termination of this Agreement.

**28. Freedom of Information**

- (1) The Independent Certifier and HMQ acknowledge and agree that *Freedom of Information and Protection of Privacy Act* ("FIPPA") may apply to and govern certain documents relating to this Agreement.

- (2) In the case of any document or other information that is or may be within the scope of FIPPA, the Independent Certifier shall:
- (a) in general, comply with the applicable requirements of FIPPA with respect to all such documents and information, and shall carry out such reasonable directions as HMQ may require with respect thereto;
  - (b) keep secure all records and other documents pertaining to any identifiable person;
  - (c) neither directly or indirectly use, collect, disclose or destroy any personal information for purposes not contemplated by this Agreement or otherwise permitted by law;
  - (d) ensure the security and integrity of personal information and keep it in a physically secure and separate location, safe from loss, alteration, destruction or intermingling with other records and databases and implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
  - (e) restrict access to personal information to those of its employees who have a need to know it and who have been specifically authorized to have such access for the purpose of performing the obligations of the Independent Certifier under this Agreement; and
  - (f) implement all other specific security measures that in the reasonable opinion of HMQ are necessary or advisable to improve the adequacy and effectiveness of the Independent Certifier's measures to ensure the security and integrity of personal information and records generally.

**29. Counterparts**

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

**30. HMQ 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 HMQ under this Agreement (including, without limitation, review of all documentation submitted by Project Co or the Independent Certifier to HMQ for review, approval, comment, evaluation or otherwise as described in this Agreement, engage in discussions, consultations and meetings with Project Co and/or the Independent Certifier, submitting notices and documentation to HMQ, issuances of notices, documentation from HMQ and related matters) 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 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 and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this 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 30.

**IN WITNESS WHEREOF** the parties have executed this Independent Certifier Contract as of the date first written above.

**ONTARIO INFRASTRUCTURE  
PROJECTS CORPORATION, as agent for  
Her Majesty the Queen in Right of Ontario**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

**ACCESS JUSTICE DURHAM LTD.**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the  
corporation.

**[INDEPENDENT CERTIFIER]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the  
corporation.

## Schedule 1

### INDEPENDENT CERTIFIER'S FEES

**Part I: Functions – Flat Fee relating to Functions identified in items (a) through (c) of Part II of Schedule 2 of this Agreement (hereafter the "Flat Fee Functions")**

[REDACTED]

**Part II: Functions – Per Diem Fee relating to Functions identified in items (a) through (l) of Part II of Schedule 2 of this Agreement (hereafter the "Per Diem Fee Functions")**

[REDACTED]

**Part III: Disbursements re: Flat Fee Functions**

The Disbursements (as defined below) reasonably incurred by the Independent Certifier directly on account of and specifically related to the Flat Fee Functions and which would not otherwise be incurred but for the Flat Fee Functions shall be paid within 30 days of Project Co's receipt of invoices therefor. "Disbursements" shall mean:

- (a) reasonable travel and subsistence expenses; and
- (b) reasonable charges for long distance telephone and facsimile communications, courier services, expressage, drawing production and photocopying incurred in relation to the performance of the Flat Fee Functions.

HMQ and Project Co shall each pay one-half of the Disbursements for the Per Diem Fee Functions.

## Schedule 2

### FUNCTIONS OF THE INDEPENDENT CERTIFIER

Without limiting the other provisions of this Agreement and the Project Agreement, the Independent Certifier shall provide the following:

#### Part I

- (a) generally, to perform any duties or responsibilities (other than those specifically described in Part II of this Schedule 2) of the Agreement and make such determinations as may be specifically provided for in the Project Agreement (including for certainty, the requirements set forth in **Schedule D (Completion Certification)**) and in accordance with the terms of the Project Agreement (where applicable) or as the parties may jointly request from time to time (to the extent they are not specifically described in Part II of this Schedule 2 of the Agreement);
- (b) specifically, to carry out the responsibilities assigned to the Independent Certifier under the Agreement, **Schedule D (Completion Certification)** of the Project Agreement and this Agreement with respect to the Completion Certificate, including the monitoring of re-inspection and re-testing as necessary (provided that, notwithstanding anything to the contrary set forth in the Project Agreement or in this Agreement, all costs and fees associated with re-inspection and re-testing shall be paid for by Project Co alone and shall be for its exclusive account);
- (c) without limiting the generality of clause (a), the Independent Certifier shall:
  - (i) receive and monitor all components of the schematic design and other project data related to schematic design development as are necessary for the Independent Certifier to be informed of in all schematic design issues and the performance of Project Co's obligations under the Project Agreement;
  - (ii) receive and monitor drawings and other project data related to design development as are necessary for the Independent Certifier to be informed in all design issues, the progress of the Project Works and the performance of Project Co's obligations under the Project Agreement;
  - (iii) receive and monitor construction drawings, as-built drawings, shop drawings, inspection reports, progress reports and other project data as necessary for the Independent Certifier to be informed as to the progress of the construction of the Project Facilities and the Project Works;
  - (iv) consult with Project Co and HMQ's Representative and make determinations, if requested by Project Co or HMQ or if otherwise

provided for under the Project Agreement, that verify planned design and construction milestones have been achieved;

- (v) conduct inspections of the Project Works as necessary for the Independent Certifier to be satisfied that the Project Works are proceeding in accordance with the requirements of the Project Agreement;
- (vi) review information relating to Variations, any HMQ Notice of Change, any Project Co Notices of Change, Changes, Estimates, claims for extensions of time and compensation and consult with relevant parties;
- (vii) maintain a current schedule of accepted Changes to the Project Works that includes a log of increases and decreases to the Capital Expenditures for construction and a record of the anticipated impact on the Completion Date;
- (viii) attend meetings relating to the Project Works (including those held by the PMOC), review minutes and participate as necessary to remain informed of project issues, or as requested by either of the parties in connection with the Project Agreement;
- (ix) review the draft Project Co Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide to the parties comments, including a report on the effectiveness of the proposed Project Co Commissioning Program, to identify any errors or omissions, and with respect to any risks inherent in that program;
- (x) prior to Completion, to monitor the conduct of the Commissioning tests and any re-tests, receive and review Commissioning test reports, and to perform such other similar responsibilities (other than performing Commissioning tests or performance of inspections) with respect to any matter relating to the Commissioning as either party may request, and to report to each of the parties thereon;
- (xi) prior to Completion, to identify any errors or omissions made during the conduct of any such Commissioning tests described in item (ix) above and to advise Project Co and HMQ with respect to the implications of those errors and omissions to the extent that the Independent Certifier may reasonably be aware;
- (xii) prior to any certification, consider the views and comments of both Project Co and HMQ in relation to the satisfaction that the Project Works are proceeding in accordance with the requirements of the Project Agreement;
- (xiii) review and monitor reports of Project Co's Architect or of Project Co and of any inspection agency retained by HMQ and/or Project Co in respect of the work being done at the Project Facilities;



- (xiv) make all determinations set out in Section 4.10 of the Project Agreement and any other determinations set out in the Project Agreement to be determined or reviewed by the Independent Certifier prior to Completion;
- (xv) review relevant documentation, including floor area schedules, government, professional and all other relevant certificates, Consents, permits, licenses and approvals, certifications, test results, quality assurance audits, letters of assurance, schedules of equipment, and related documentation contemplated under the Project Agreement or required or advisable in accordance with Good Industry Practice;
- (xvi) prior to Completion, review Project Co cash allowance expenditures against the installations, in respect of the cash allowances set forth in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)** of the Project Agreement;
- (xvii) carry out inspections (including re-inspections if necessary) in order to determine whether the Completion Criteria have been satisfied and comply with the rules and procedures set forth in the Project Agreement including, for certainty, in **Schedule D (Completion Certification)** of the Project Agreement in order to make such determination;
- (xviii) upon receipt of notice from Project Co pursuant to and in accordance with the terms of the Project Agreement requesting the issuance of the Completion Certificate, consider such request within the time period set out in the Project Agreement and within the time period set out in the Project Agreement either:
  - (A) issue the Completion Certificate; or
  - (B) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the Completion Certificate;
- (xix) upon notice from Project Co that the matters required to be performed prior to issuing the Completion Certificate have been completed, re-inspect the Project Works or reconsider the matters specified to be performed, and repeat the procedures in clause (xvii) of Part I of this Schedule 2 to the Agreement until the issuance of the Completion Certificate;
- (xx) prepare (acting diligently), in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event, within the time period specified in **Schedule D (Completion Certification)** of the Project Agreement, the Minor Matters List, which Minor Matters List will include an estimate of the cost and the time for rectifying the Minor Matters and a schedule for the completion and rectification of the Minor Matters;

- (xxi) provide any determination contemplated by this Agreement and the Project Agreement (to the extent such determinations relate to Project Works which are not specifically identified in Part II of this Schedule 2 of the Agreement), which determinations may, except as otherwise expressly provided in the Project Agreement, be subject to final resolution between HMQ and Project Co pursuant to Article 43 (Dispute Resolution) of the Project Agreement;
- (xxii) provide advice on other matters that may arise that both HMQ and Project Co may jointly require to the extent such matters relate to the Project Works and which are not specifically identified in Part II of this Schedule 2 of the Agreement;
- (xxiii) review information relating to Delay Events and Compensation Events as they relate to the Project Works that occur prior to the Completion Date; and
- (xxiv) participate in and give Project Co and HMQ 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 HMQ and Project Co that relate to the Functions identified in this Part I of this Schedule 2 to the Agreement.

## **Part II**

- (a) after Completion reconcile Project Co invoices for expenditure recovery against HMQ budgets and cash allowances described in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)** of the Project Agreement;
- (b) generally, to perform any duties and responsibilities and make such determinations as may be specifically provided for in the Project Agreement after Completion (including, for certainty, the requirements of Commissioning during the Commissioning Fine Tuning Period set forth in **Schedule C (HMQ Outline Commissioning Plan)**) of the Project Agreement and the Project Co Commissioning Program, once accepted, and in accordance with the terms of the Project Agreement (where applicable or as the parties may jointly request from time to time);
- (c) after Completion, reconcile the increases and decreases to the Capital Expenditures for construction resulting from HMQ Changes;
- (d) review as built drawings received from Project Co after Completion to ensure completeness before Project Co prepares Record Drawings;
- (e) to monitor the conduct of Commissioning tests during the Commissioning Fine Tuning Period, including, without limitation, any re-tests, review of Commissioning test reports and results, copies of any certificates or other permits,

licenses and approvals received by Project Co in connection with any Commissioning test conducted during the Commissioning Fine Tuning Period, review and accepting interim and final the Seasonal Fine Tuning Reports required to be delivered pursuant to **Schedule C (HMQ Outline Commissioning Plan)** of the Project Agreement and to perform such other similar responsibilities (other than performing Commissioning tests or performance of inspections) with respect to any matter relating to Commissioning after Completion as either party may request and to report to each of the parties thereon, including, for certainty, review of acoustical performance test reports and vibration test reports, air balancing reports provided to the Independent Certifier pursuant to **Schedule C (Outline Commissioning Plan)**;

- (f) to identify any errors or omissions made during the conduct of any such Commissioning tests referenced in item (e) above and to advise Project Co and HMQ with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware;
- (g) make all determinations set out in Section 4.10 of the Project Agreement and any other determinations set out in the Project Agreement to be determined and reviewed by the Independent Certifier as it relates to post-Completion Commissioning;
- (h) provide any determination contemplated by this Agreement and the Project Agreement (to the extent such determinations relate to the Project Works to be performed after the Completion Date), which determinations may, except as expressly provided in the Project Agreement, be subject to final resolution between HMQ and Project Co pursuant to Article 43 (Dispute Resolution) of the Project Agreement;
- (i) provide advice on other matters that may arise that both HMQ and Project Co may jointly require to the extent such matters relate to Project Works to be completed after Completion (including, for certainty, Commissioning activities during the Commissioning Fine Tuning Period);
- (j) assisting with the resolution of disputes between HMQ and Project Co relating to the Project Co Commissioning Program (as it relates to Commissioning to be conducted during the Commissioning Fine Tuning Period);
- (k) participate in and give Project Co and HMQ 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 HMQ and Project Co that relates to the Functions identified in this Part II of this Schedule 2 to the Agreement; and
- (l) review and observe installation of Existing FF&E into the Project Facilities by HMQ or any agent or contractor of HMQ after Completion and provide a report to

HMQ and Project Co identifying any damage to the Project Facilities which has been caused as a result of the installation of such Existing FF&E into the Project Facilities by HMQ, its contractors and/or agents.

## **Schedule 4**

### **INDEPENDENT CERTIFIER PERSONNEL**

The following personnel shall be involved in the performance of the Functions:

**[NTD: Insert names and titles of relevant individuals.]**

**SCHEDULE B**  
**PART VI**  
**PROJECT CO'S PROPOSALS**

**[REDACTED]**

**SCHEDULE B**  
**PART VI**  
**PROJECT CO'S PROPOSALS**

**[REDACTED]**

**SCHEDULE B**  
**PART VII**  
**VALUE ADD SUBMISSION REQUIREMENTS**

**[REDACTED]**



**Project Agreement – Schedule B (Part VIII)  
Redacted Version**

**SCHEDULE B  
PART VIII  
RFI RESPONSES**

**[REDACTED]**

**SCHEDULE C  
OUTLINE COMMISSIONING PLAN**

The following constitutes an outline of the procedure and minimum requirements for the Project Co Commissioning Program to be submitted by Project Co in accordance with the Agreement.

**1. Definitions**

- 1.1 **“Commissioning”** means the quality assurance process implemented by Project Co to render the statically complete structure into a dynamically complete operating facility, verifying that the planning, design, construction and operational processes have achieved their intended outcome for all dynamic and static components of the Project Facilities and includes, for certainty, Seasonal Fine Tuning during the Commissioning Fine Tuning Period;
- 1.2 **“Commissioning Agent”** has the meaning ascribed to it in Section 3.1 herein;
- 1.3 **“Commissioning Fine Tuning Period”** has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement;
- 1.4 **“LEED Specialist”** means the individual with Leadership in Energy and Environmental Design accredited professional status named by Project Co and accepted pursuant to the RFP-1 process.
- 1.5 **“Operating Plant and Equipment”** means the dynamic components of the Project Facilities such as exterior site mechanical, electrical and civil systems, building power, lighting, mechanical, building automation, integrated security, communication, audio/visual, other specialized courts systems and the like;
- 1.6 **“Re-Commissioning Plan”** has the meaning ascribed to it in Section 8 herein;
- 1.7 **“RFP-1”** means the request for proposals issued in connection with the Project on July 15, 2005;
- 1.8 **“RFQ”** means the request for qualifications in respect of the Project issued on March 31, 2005, as amended by a conformed request for qualifications issued on May 2, 2005;
- 1.9 **“Seasonal Fine Tuning”** means the detailed calibration of the systems and equipment at the Project Facilities designed to control the indoor environment of the Project Facilities, through fully loaded occupancy cycles of four (4) complete seasons (or such earlier time as HMQ may agree, acting reasonably) after Completion whereby Project Co verifies, through various testing, that all key systems in the Project Facilities, including, for certainty, heating, air conditioning and ventilations are functioning in accordance with the HMQ Design Requirements and the HMQ Facilities Management Requirements;

- 1.10 **“Seasonal Fine Tuning Reports”** means the written reports prepared by Project Co which set forth and detail the Seasonal Fine Tuning conducted by Project Co at the end of each season (or such earlier time as HMQ may agree, acting reasonably) up until the end of the Commissioning Fine Tuning Period (and includes, for certainty, a final seasonal fine tuning report delivered at the end of the Commissioning Fine Tuning Period);
- 1.11 **“Static Plant”** means the non-dynamic components of the Project Facilities such as exterior site features, building envelope, substructure, structure, interior finishes, ramps, stairs, railings, hardware, signage and the like.
- 1.12 **“Substantial Performance”** has the meaning ascribed to it in the *Construction Lien Act* (Ontario);
- 1.13 All other capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Agreement.

## **2. Objective**

The objective of the Project Co Commissioning Program shall be to prepare a document to record a Commissioning process approved by HMQ that will ensure:

- 2.1.1 the planning, design, construction and operational processes have achieved their intended outcome;
- 2.1.2 the continued efficient operation of the dynamic systems through the Service Period through implementation of a re-commissioning plan;
- 2.1.3 all participants follow an approved plan to ensure the completed Project Facilities will realize its intended level of operational efficiency and occupant comfort by the Planned Completion Date and during the Service Period;
- 2.1.4 the intended level of LEED-NC rating will be achieved and the intended LEED-EB rating will be maintained through the Service Period;
- 2.1.5 all stakeholders in the Project understand their responsibilities for Commissioning prior to the Completion Date and during the Commissioning Fine Tuning Period;
- 2.1.6 all occupants of the Project Facilities will be oriented to the Project Facilities and will understand their continuous role in its efficient operation; and
- 2.1.7 the completed Project Facilities satisfies the definition of Courthouse Functionality.

## **3. Commissioning Agent**

- 3.1 Project Co shall engage the services of a commissioning agent (the **“Commissioning Agent”**) acceptable to HMQ, having specialized experience in commissioning recently

constructed facilities of similar complexity to the Project Facilities and equal or larger building area. The Commissioning Agent must be a person that specializes in building commissioning and shall be commercially independent of any person already accepted in the earlier RFQ and RFP-1 processes. In the event that Project Co proposes a Commissioning Agent that HMQ believes, acting reasonably, cannot meet the stated requirements, Project Co shall propose an alternative Commissioning Agent that is acceptable to HMQ. If the parties are unable to agree with the Commissioning Agent, the Dispute Resolution Procedure shall apply.

- 3.2 The Commissioning Agent shall not be the same person as the LEED Specialist.
- 3.3 Project Co shall propose a person acceptable to HMQ who can back up the named Commissioning Agent in the event that the Commissioning Agent is unavailable to complete this role.
- 3.4 The Commissioning Agent will take the lead role in coordinating the entire Commissioning process on behalf of Project Co, from preparation of the Project Co Commissioning Program through to the end of the Commissioning Fine Tuning Period. The Commissioning Agent shall also be responsible for all items identified in LEED-NC Energy & Atmosphere credit 3, Best Practice Commissioning. The Commissioning Agent shall be Project Co's only representative in respect of the Commissioning process, and shall be the only point of contact in respect of Commissioning matters for HMQ and the Independent Certifier throughout the Commissioning process.

#### **4. The Commissioning Program**

- 4.1 The Commissioning Agent should be engaged sufficiently early in the design process to ensure Project Co is eligible for all LEED credits associated with the Commissioning of the Project Facilities. The Commissioning Agent shall work closely with the LEED Specialist to inform the design process, ensure Commissioning requirements are considered in design selections and appropriate Commissioning instructions are included in the construction specifications for each trade.
- 4.2 The task of preparing a draft Project Co Commissioning Program shall begin as early as practicable in the design process. The Project Co Commissioning Program shall be prepared and submitted to HMQ in accordance with Section 4.5 of the Agreement.
- 4.3 The Project Co Commissioning Program shall satisfy LEED-NC Energy and Atmosphere credit 3 Best Practice Commissioning. In accordance with the LEED Best Practice Commissioning, the following items shall be addressed in the Project Co Commissioning Program: (i) independent review of schematic design documents; (ii) independent review of construction documents; (iii) focused review of contractor submittals to verify compliance with requirements; (iv) an indexed systems manual; and (v) post-Completion review of the Project Facilities and Seasonal Fine Tuning Report.
- 4.4 Prior to the Commissioning Commencement Date, the Commissioning Agent shall prepare monthly reports to record the progress made on Commissioning decisions and

procedures. The frequency of reports will be increased up to weekly intervals prior to the Commissioning Commencement Date.

4.5 The Project Co Commissioning Program shall:

- 4.5.1 identify the names, roles, and where appropriate, the qualifications of all persons proposed to perform a role in the Commissioning process are identified;
- 4.5.2 contain provisions which ensure successful completion of all Commissioning tests and all other Commissioning activities required for the proper Commissioning of the Project Facilities (both prior to the Completion Date and during the Commissioning Fine Tuning Period) including all New MAG FF&E, to the satisfaction of HMQ and the Independent Certifier, acting reasonably;
- 4.5.3 contain provisions which will ensure successful completion of all Commissioning tests and other Commissioning activities required for commencement of the Service Period Works, to the satisfaction of HMQ and the Independent Certifier, acting reasonably;
- 4.5.4 contain provisions which will ensure successful completion of all Commissioning tests and other Commissioning activities during the Commissioning Fine Tuning Period, to the satisfaction of HMQ and the Independent Certifier, acting reasonably;
- 4.5.5 contain provisions which will ensure employment by Project Co of Commissioning procedures that are prescribed by Applicable Law using methodologies so prescribed and methodologies prescribed in the standards contained in the Performance Specifications set out in the HMQ Design Requirements;
- 4.5.6 contain provisions which will ensure that standards or results to be achieved in each test for such tests to be successful shall satisfy all standards or results applicable to such Commissioning test as contained in any Applicable Law, the Ontario Building Code, Canadian and Industry Standards, CSA Standards, ASHRAE Standards, the Agreement (including, for certainty, this Schedule) and the Performance Specifications set out in the HMQ Design Requirements, and those recommended by the manufacturer of that part of the Operating Plant and Equipment with respect to which the Commissioning test is to be performed;
- 4.5.7 contain provisions which ensure that the Project Co Commissioning Program shall not propose a test or procedure that deviates from any procedure, standard, or specification intended by the HMQ Design Requirements, the Agreement (including, for certainty, the Schedules thereto), or the HMQ Facilities Management Requirements unless specifically approved in writing by HMQ and the Independent Certifier;

- 4.5.8 contain provisions which require that all Commissioning tests results and copies of all certificates or other permits, licences, and approvals received by Project Co in connection with any Commissioning test shall be provided to the Independent Certifier;
- 4.5.9 ensure that there are no provisions which create greater burdens to be imposed on the Independent Certifier, the Design and Construction Compliance Consultant, HMQ, MAG, any Province Person or any other advisor to the Government than is contemplated in the Agreement;
- 4.5.10 contain an achievable Commissioning schedule which shows the name, timing and dependencies of each step in (i) the critical path schedule to reach Completion; and (ii) the schedule to complete Seasonal Fine Tuning during the Commissioning Fine Tuning Period;
- 4.5.11 ensure that where a re-certification strategy has been proposed and accepted under the enhanced bid provisions in the RFP, provisions are included in the program which provide that the prescribed prerequisites and credits necessary for the intended LEED NC rating will be achieved and can be maintained through the Service Period under “BOMA Go Green” and/or LEED EB programs, as selected; and
- 4.5.12 contain provisions providing that where a Commissioning test has been successfully completed as required by the approved Project Co Commissioning Program and where that Commissioning test is identical to a Commissioning test that is required to satisfy any subsequent approved Project Co Commissioning Program requirement and such test would be redundant, the Commissioning test does not need to be repeated unless specifically required by a Governmental Authority having jurisdiction or Applicable Law.

## **5. Conduct of Commissioning Tests**

- 5.1 Under the direction of the Commissioning Agent, appropriately qualified personnel shall implement all Commissioning tests as set out in the Project Co Commissioning Program. Project Co shall give a minimum of seven (7) days notice to, and shall invite both the Independent Certifier and the Design and Construction Compliance Consultant to witness and to comment on each aspect of Commissioning (including all Commissioning tests) up until Commissioning is fully complete (which includes, all Commissioning tests up until the end of the Commissioning Fine Tuning Period). Project Co shall, together with such notice to the Independent Certifier and the Design and Construction Compliance Consultant, provide them with all information they may reasonably require in relation thereto, including, without limitation: (i) tests proposed; (ii) test methodology; and (iii) expected test results. In addition, the Independent Certifier and the Design and Construction Compliance Consultant shall be provided with full and reasonable access to all commissioning activities to ensure they remain fully informed of the process.

5.2 The confirmed results of all Commissioning tests shall be posted in the e Room within seven days of verification.

5.3 The Commissioning Agent shall not perform any of Project Co's Commissioning activities and its actions shall not absolve Project Co from any of its obligations under the Agreement.

## **6. Operating Plant and Equipment Commissioning**

6.1 The Project Co Commissioning Program shall provide for, but shall not be limited to, descriptions of the following stages for each component of Operating Plant and Equipment and each complete system to be tested in the Project Facilities, which for greater clarity, includes base building construction and the tenant fit up (including, for certainty, all FF&E installations):

6.1.1 installation verification;

6.1.2 start up;

6.1.3 functional testing, including Seasonal Fine Tuning and full load testing;

6.1.4 representative sampling where appropriate;

6.1.5 acceptance reports;

6.1.6 orientation, classroom and field training to be provided by Project Co for MAG Occupants and Non-MAG Occupants prior to Completion, such training to be acceptable to HMQ and MAG, acting reasonably. Training and orientation to include, among other things: security systems, audio-visual systems, communications systems and FF&E installed into the Project Facilities by Project Co. Additional orientation, classroom and field training on other specific requirements regarding building orientation and security and communications systems for Durham Regional Police Services to be located at the Durham courthouse shall also be provided by Project Co, as requested by HMQ, acting reasonably;

6.1.7 recorded media for demonstration and training for HMQ, MAG and Province Persons, where appropriate; and

6.1.8 recorded media for demonstration and training in form acceptable to HMQ (and based upon requirements of the police, acting reasonably);

6.1.9 preparation of operating and maintenance manuals for each component of Operating Plant and Equipment and each complete system to be tested in the Project Facilities.

6.2 The Project Co Commissioning Program shall also demonstrate in the four (4) complete seasons (or such earlier time as HMQ may agree, acting reasonably) following

Completion, (i) full integration and automated control of all building systems through the building automation system, under a full range of building population and seasonal loadings, including emergency conditions; and (ii) that Seasonal Fine Tuning will be carried out during the Commissioning Fine Tuning Period. At the end of each of the four (4) seasons after Completion, the Commissioning Agent shall prepare a Seasonal Fine Tuning Report for review and acceptance by the Independent Certifier. Project Co shall engage in re-commissioning tests during the Commissioning Fine Tuning Period and re-submit Seasonal Fine Tuning Reports if any Seasonal Fine Tuning Report does not demonstrate, to the satisfaction of the Independent Certifier, that the Project Facilities and building systems meet the standards contained in the Performance Specification set out in the HMQ Design Requirements. Such commissioning tests and reports shall be repeated re-submitted, respectively, until the Independent Certifier confirms that the Project Facilities and building systems meet the performance standards contained in the Performance Specifications set out in the HMQ Design Requirements for such season, and in respect of the final Seasonal Fine Tuning Report, for all seasons during the Commissioning Fine Tuning Period.

## **7. Static Plant Commissioning**

7.1 The Static Plant Commissioning shall include, but is not limited to, the following:

- 7.1.1 installation verification and quality checks;
- 7.1.2 acceptance reports;
- 7.1.3 deficiency documentation and correction process;
- 7.1.4 user instruction where appropriate; and
- 7.1.5 preparation of maintenance instructions for the components of Static Plant Commissioning.

## **8. Re-commissioning Requirements**

8.1 Project Co shall provide a re-commissioning plan to HMQ (the "**Re-Commissioning Plan**") no later than 5 years after the Completion Date and on each of the eleventh, seventeenth and twenty-third year after the Completion Date for approval by HMQ. Each Re-Commissioning Plan shall describe how Project Co will ensure continuous high performance throughout the Agreement Term, including but not limited to:

- 8.1.1 a BOMA Go Green Plus certification plan that has been coordinated with the LEED-EB certification schedule that outlines intervals between re-commissioning of building systems;
- 8.1.2 a schedule outlining cyclical systems audits, re-commissioning, post occupancy performance review and third party reviews;



- 8.1.3 in respect of the first Re-Commissioning Plan required to be delivered by Project Co hereunder, a detailed description of the steps Project Co will take to satisfy LEED-EB Version 2, dated July 2005, Energy and Atmosphere Prerequisite 1, Existing Building Commissioning; and
  - 8.1.4 in respect of each Re-Commissioning Plan required to be delivered by Project Co hereunder (other than the first Re-Commissioning Plan), a detailed description of the steps Project Co will take to satisfy the existing requirements at the time of registration in Canada for LEED for Existing Buildings, Energy and Atmosphere Prerequisite 1, Existing Building Commissioning.
- 8.2 In addition, in accordance with the LEED-EB credit requirement for existing building commissioning, the following items shall also be addressed in each Re-Commissioning Plan:
- 8.2.1 Project Co shall verify and demonstrate how it will ensure that fundamental building elements and systems are installed, calibrated and operating as intended so they can deliver functional and efficient performance.
  - 8.2.2 Project Co shall demonstrate how it proposes to carry out comprehensive existing building commissioning including the following:
    - 8.2.2.1 details of a comprehensive building operation plan that meets the requirements of current building usage, and addresses the heating system, cooling system, humidity control system, lighting system, safety systems and the building automation controls;
    - 8.2.2.2 details of a commissioning plan for carrying out the testing of all building systems to verify that they are working according to the specifications of the building operation plan referenced above;
    - 8.2.2.3 details of how Project Co proposes to implement the commissioning plan and the procedure for documenting all of the results;
    - 8.2.2.4 details of the steps Project Co will take to repair and/or upgrade all systems components that are found to be not working according to the specifications of the building operation plan referenced above;
    - 8.2.2.5 details of how Project Co will proceed with the re-testing of building components that require repair and/or upgrade to verify that they are working according to the specifications of the Project Co Commissioning Program.
- 8.3 Project Co shall comply with and perform all procedures and steps described in each Re-Commissioning Plan that has been approved by HMQ.

8.4 Each Re-Commissioning Plan shall be reviewed by HMQ in accordance with the procedures set forth in **Schedule N (Review Procedure)** of the Agreement.

**9. Other Commissioning Activities**

9.1 Other commissioning activities to be performed by Project Co shall include but not be limited to:

9.1.1 the implementation of HMQ and occupant building orientation and information sessions after Completion;

9.1.2 the initiation of the facilities management help desk operation and orientation of occupants, as described in the HMQ Facilities Management Requirements, after Completion;

9.1.3 the review of Project Co's emergency procedure and life safety plans prior to Completion;

9.1.4 prior to Completion, submit to the Independent Certifier for review and once finalized, post to the e Room, relevant project records including, but not limited to,

9.1.4.1 copies of all approvals required from Governmental Authorities for Substantial Performance and Completion;

9.1.4.2 certified schedule of final building areas calculated in accordance with "BOMA standards";

9.1.4.3 final commissioning acceptance reports relating to Commissioning conducted prior to the Completion Date; and

9.1.4.4 as-built drawings relating to security systems at the Project Facilities (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems).

9.1.5 as soon as practicable after occupancy of the Project Facilities by MAG Occupants and Non-MAG Occupants is complete, as notified by HMQ to Project Co, but no later than one hundred (100) days after such occupancy, Project Co shall submit to the Independent Certifier for review and once finished, post in the e Room, relevant project records including, but not limited to,

9.1.5.1 acoustical performance test reports with normal occupant loads and building system operation, including emergency generator under load;

- 9.1.5.2 vibration test reports and air balancing reports for the operating building;
- 9.1.5.3 final commissioning acceptance reports relating to the Commissioning conducted during the Commissioning Fine Tuning Period; and
- 9.1.5.4 all other as-built drawings relating to the Project Facilities not required to be delivered pursuant to Section 9.1.4.4 above.

**10. Excluded from the Project Co Commissioning Program**

10.1 The following items shall not be included in the Project Co Commissioning Program:

- 10.1.1 MAG and Non-MAG Occupant telephone equipment;
- 10.1.2 MAG and Non-MAG Occupant information technology equipment;
- 10.1.3 Any other occupant provided equipment without Project Co contractual involvement; and
- 10.1.4 MAG and Non-MAG Occupant leased equipment such as copiers, fax machines, printers.

## **SCHEDULE D**

### **COMPLETION CERTIFICATION**

Capitalized terms used herein and not otherwise defined have the meanings attributed to them in the Agreement.

In this Schedule, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"**Act**" means the *Construction Lien Act* (Ontario);

"**Completion Criteria**" has the meaning specified in section 1.1;

"**Completion Notice**" has the meaning specified in section 2.1(b);

"**Date of Completion**" has the meaning specified in section 2.1(e);

"**HMQ's Project Manager**" has the meaning ascribed to it Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**;

"**Manager of Court Operations**" means MAG's manager of court operation for the Project Facilities, or the person performing the function, customarily associated with the office of manager of court operation in Ontario from time to time;

"**Minor Matters**" means any defects, deficiencies and items of outstanding work (including in relation to seasonal work), that would not materially impair Courthouse Activities or the performance of the Service Period Works;

"**Minor Matters List**" has the meaning specified in section 3.1(a);

"**Police Systems Design Development Documents**" has the meaning ascribed to it in Part IV: Cash Allowance Procedure of **Schedule B (Project Works)**;

"**Police Systems Rough-In**" means the rough-in of Durham Regional Police Services radio communications systems conduits at the Project Facilities in accordance with the Police Systems Design Development Documents.

#### **1. Completion Criteria**

1.1 Despite any convention of the construction industry in Ontario and despite the definition of completion in the Act, Completion of the Project Facilities shall have occurred for purposes of the Agreement if and only if the Independent Certifier has determined that the following criteria are met:

- (a) the Project Facilities in their entirety are ready for use for the purposes of normal courtroom and court office operations except for Minor Matters;

- (b) the following items have been delivered to HMQ and the Independent Certifier:
  - (i) the applications programming and related documentation for all microprocessor based controllers for the Project Facilities; and
  - (ii) copies of all operating instructions, maintenance records and maintenance manuals relating to the Project Facilities and the operation thereof as well as as-built drawings relating to security systems at the Project Facilities (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems);
- (c) installation of New MAG FF&E such that the New MAG FF&E is ready for use and defect free, except for Minor Matters;
- (d) all Governmental Authorities having jurisdiction have confirmed (and issued all pertinent documents in respect thereof, as available) that all buildings and structures on the Site are ready for occupancy;
- (e) Project Co's architect of record has issued a letter of confirmation to HMQ and the Independent Certifier indicating that all buildings and systems at the Project Facilities are ready for use, except for Minor Matters and to the best of its knowledge have been built in accordance with the HMQ Design Requirements;
- (f) Police Systems Rough-In has been completed in accordance with and the requirements set forth in the Police Systems Design Development Documents;
- (g) there are no Encumbrances (including, for certainty, construction liens under the *Construction Lien Act* (Ontario)) registered on the Site or the Project Facilities other than Permitted Encumbrances; and
- (h) the commissioning program and procedures set forth in the Project Co Commissioning Program for the Project Facilities have been carried out successfully and in full, subject to Section 3 of this Schedule and subject to such Commissioning which is identified in the Project Co Commissioning Program to be conducted after the Completion Date.

(collectively, the "**Completion Criteria**").

1.2 For the purposes of section 1.1, in determining whether the Project Facilities are "ready for use", the following factors shall be taken into account:

- (a) the requirements of the Agreement, including all Schedules thereto, and in particular the HMQ Requirements;
- (b) the right of public access to the Project Facilities, and the risk of injury to members of the public and all building users;
- (c) the security services set out in the HMQ Facilities Management Requirements are operational;
- (d) any apparent hazard or nuisance;

- (e) the need to conduct court operations in a reasonably quiet and stable environment free from, dust, chemical, smoke and other health and safety concerns;
- (f) the proper installation and functionality of all New MAG FF&E; and
- (g) such other functional requirements and considerations as a reasonable person of ordinary prudence would take into account if asked to decide whether the Project Facilities are suitable for the commencement and/or continuation of court proceedings,

all so that, subject to Minor Matters, the Project Facilities in their entirety are ready to use for the purposes of normal courtroom and court office operations.

1.3 Subject to subsections 1.4 and 1.6 of this Schedule, but otherwise despite any other provision of this Schedule, the Agreement or any other agreement, in deciding whether the Completion Criteria have been satisfied, the Independent Certifier shall *disregard* each of the following except as specifically stated in each case:

- (a) any deficiency relating to the functionality or performance of FF&E (other than New MAG FF&E), except to the extent that the same is the result of the improper installation or other negligent or wilful misconduct on the part of the Project Co;
- (b) any pre-existing condition, damage to or the deterioration of any artwork, *objets d'art*, library or other books (whether new or used), used library shelving, used furniture or Existing FF&E installed into the Project Facilities prior to Completion, except to the extent that,
  - (i) the damage or destruction to such items occurs after installation in the Project Facilities and such damage and/or destruction is caused, directly or indirectly, by an act or omission of Project Co or any other Project Co Party; or
  - (ii) the damage or destruction to such items is the result of negligent or wilful misconduct on the part of Project Co or any Project Co Party during the installation and provided that for greater certainty, this section shall apply with respect to all FF&E and all privately owned furniture or equipment of any type of description which is moved into and installed into the Project Facilities by Project Co in accordance with the terms of the Agreement;
- (c) the functionality of or damage to any telephone or telephony system, except for:
  - (i) damage occurring on the Project Facilities after installation and such damage is caused, directly or indirectly, by an act or omission of Project Co or any other Project Co Party; or
  - (ii) any non-functionality to the extent that it is attributable to deficient installation or non-installation of any telephone or other wiring or cable in the Project Facilities by Project Co or a deficiency in the design of the Project Facilities by Project Co;

- (d) the functionality of or damage to any computer or information technology system or equipment, except for:
  - (i) damage occurring in the Project Facilities after installation and such damage is caused, directly or indirectly, by an act or omission of Project Co or any other Project Co Party; and
  - (ii) any non-functionality to the extent attributable to deficient installation or non-installation of any telephone or other wiring or cable in the Project Facilities or deficiencies in the design of the Project Facilities.
- 1.4 Subject to subsections 1.5 and 1.6 of this Schedule, but otherwise despite any other provision of this Schedule, the Agreement or any other agreement, in deciding whether the Completion Criteria have been satisfied, the Independent Certifier shall take into account each of the following except to the extent specifically stated in each case:
  - (a) whether the Project Facilities' security system, and its metal, smoke, gas, fire, explosive or other detectors are functional in accordance with the requirements set forth in the Agreement, but not to the extent that the non-functionality thereof is attributable to the non-performance or inadequate performance of any FF&E (other than New MAG FF&E).
- 1.5 Project Co is entitled to the benefit of any exception in section 1 relating to any pre-existing condition if and only if that condition has been specifically recorded by Project Co at any time prior to issuance of the Completion Certificate, as confirmed by the Independent Certifier.
- 1.6 The Independent Certifier shall disregard, any deficient performance, incomplete work, or delay with respect to any of the matters described in section 1 to the extent that the same resulted from or is directly attributable to the wilful misconduct or negligence of any Province Person.

## **2. Procedure for Certification**

- 2.1 Completion shall be determined and certified in accordance with the following rules and procedures:
  - (a) Project Co shall provide the Independent Certifier, the Design and Construction Compliance Consultant and HMQ each not less than thirty (30) Business Days' notice of the date on which it anticipates the Project Facilities will be in the condition necessary to satisfy the Completion Criteria in accordance with section 4.8(a) of the Agreement and the date on which it is intended that the Independent Certifier carry out the final inspection of the Project Works with a view to issuing the Completion Certificate;
  - (b) Within ten (10) Business Days after the notice referenced in Section 2.1(a) of this Schedule is provided by Project Co and in any event at least twenty (20) Business Days prior to the inspection of the Project Facilities by the Independent Certifier, Project Co shall give the Independent Certifier, the Design and Construction

Compliance Consultant and HMQ an application for certification of Completion (the "**Completion Notice**") in the form set out in Form 1 of this Schedule, together with Project Co's opinion as to whether the conditions for issuance of the Completion Certificate have been satisfied;

- (c) Provided that Project Co has complied with subsections 2.1(a) and 2.1(b) hereof, upon the written request of Project Co, the parties shall cause the Independent Certifier to, no earlier than the thirtieth (30<sup>th</sup>) Business Day after notice has been provided by Project Co pursuant to Section 2.1(a), (and no later than the thirty-fifth (35<sup>th</sup>) Business Day after notice has been given), consider whether the Completion Criteria have been satisfied, having regard to the opinions of Project Co and HMQ, and to issue to HMQ and Project Co either:
  - (i) the Completion Certificate, setting out the Date of Completion; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co in order for the Completion Criteria to be satisfied.

If the Independent Certifier so determines that the Completion Criteria have been satisfied, it shall forthwith certify that fact by execution of the Completion Certificate in the prescribed form set out in Form 2 of this Schedule. The Independent Certifier's decision to issue or not to issue the Completion Certificate shall be final and binding on the parties solely in respect of determining the Payment Commencement Date and a dispute between the parties 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 between the parties in relation to the Independent Certifier's decision to issue or not issue the Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure;

- (d) In determining whether there is an entitlement for the issue of a Completion Certificate, the Independent Certifier shall:
  - (i) witness such tests and investigations and make such inquiries as seem to the Independent Certifier to be reasonably necessary or advisable to the question of whether the Completion Criteria have been satisfied, including taking into consideration the matters set forth in Section 1.2 and 1.4 of this Schedule; and
  - (ii) in connection therewith, consult and consider the views of Project Co, HMQ's Project Manager, the Design and Construction Compliance Consultant and the Manager of Court Operations for the Project Facilities.

The obligation to carry out tests and investigations and consult and consider the views under this subparagraph 2.1(d) of this Schedule shall not apply where, in the circumstances, a reasonable person in the position of the Independent Certifier would consider it clear that Completion Criteria have not been satisfied;



- (e) Where it is determined that the Project Facilities meet the criteria for Completion, the Project Facilities shall be deemed to have met such criteria on the date on which the Completion Certificate is delivered by the Independent Certifier to HMQ, Project Co and MAG (the "**Date of Completion**");
- (f) The Independent Certifier shall deliver a duplicate signed original of the Completion Certificate to the HMQ, Project Co, and MAG on the date in which the Independent Certifier has determined that the Project Facilities meet the criteria for Completion;
- (g) Unless otherwise specified in the Agreement, the rights and obligations of HMQ and Project Co arising upon Completion shall commence and run from the Date of Completion;
- (h) In carrying out his or her responsibilities under this section 2, the Independent Certifier shall act as an independent professional and in particular shall make an independent assessment of such facts as are relevant to his or her determination, including taking into consideration the matters set forth in Section 1.2 and 1.4 of this Schedule. Where, for any reason, the Independent Certifier is not available for the purposes of this section, HMQ and Project Co shall jointly appoint a person of equivalent training, experience and competence to perform the role of the Independent Certifier under this section 2;
- (i) Where the Independent Certifier has issued a report referred to in subparagraph 2.1(c)(ii) of this Schedule, Project Co shall, within seven (7) days of the receipt of such report, provide the Independent Certifier and HMQ with details of all additional rectification actions and Commissioning that need to be performed by Project Co as a result of all matters raised by the Independent Certifier in such report, and Project Co shall perform all such additional rectification actions and Project Co may give a further Completion Notice and the procedures set out in this Section 2.1 (as modified pursuant to Section 4.8(d) of the Agreement) shall be repeated until the Completion Certificate has been issued;

### **3. Minor Matters**

#### 3.1 Minor Matters

- (a) In the event that Minor Matters exist when Project Co applies for the Completion Certificate, the Independent Certifier, in consultation with Project Co and HMQ, shall, within fifteen (15) Business Days of issuance of the Completion Notice (or earlier, in the case of a re-inspection of the Project Facilities by the Independent Certifier), and in any event, prior to inspection of the Project Facilities by the Independent Certifier to determine whether the Project Facilities have met the Completion Criteria, prepare a list of all Minor Matters (the "**Minor Matters List**") identified at that time and an estimate of the cost and the time for rectifying such Minor Matters.
- (b) The Minor Matters List will contain the schedule for the completion and rectification of the Minor Matters. In determining the relevant time for rectifying

Minor Matters, Project Co shall schedule the completion and rectification of Minor Matters so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ's use and enjoyment of the Project Facilities, disruption of the Project Operations and the Courthouse Activities.

- (c) The Independent Certifier must prepare and issue to HMQ and Project Co the Minor Matters List before the Completion Certificate is issued, but shall not withhold the Completion Certificate by reason solely that there are Minor Matters.
- (d) HMQ may, in its sole discretion, waive any requirement for Completion, including with respect to New MAG FF&E and the failure to meet any such requirement shall constitute a Minor Matter.

### 3.2 Rectification of Minor Matters

- (a) Project Co shall, in consultation with the Design and Construction Compliance Consultant and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations and the Courthouse Activities, complete and rectify all Minor Matters within forty-five (45) days of the issuance of the Minor Matters List or such other period as the Independent Certifier may specify in the Minor Matters List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Matters may require work outside of normal working hours in order to accommodate the efficient operation of the Project Facilities and Courthouse Activities.

### 3.3 Failure to Rectify Minor Matters

- (a) If, within thirty (30) days after the time specified in the Minor Matters List, Project Co has failed to complete and rectify the Minor Matters specified in the Minor Matters List:
  - (i) HMQ may withhold from the next payment or payments otherwise due to Project Co a holdback amount that is 200% of the amount estimated by the Independent Certifier for HMQ to complete and rectify the Minor Matters (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
  - (ii) HMQ may engage others to perform the work necessary to complete and rectify the Minor Matters, at the risk and cost of Project Co, and HMQ may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of all of the Minor Matters, HMQ shall release to Project Co the then remaining amount of the holdback together with all remaining interest accrued thereon. If the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse HMQ for all such excess cost.

3.4 Effect of Certificates/Use

- (a) The issue of the Completion Certificate, any taking over or use by HMQ of any part of the Project Facilities under the terms of this Agreement, and/or any commencement of any Courthouse Activities shall, in no way:
  - (i) limit the obligations of Project Co under this 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 Matters List; or
  - (ii) be construed as an approval by HMQ of the Project Works or the way in which they have been carried out.
- (b) The Completion Certificate shall be conclusive evidence of the matters set out therein and shall be final and binding as between HMQ and Project Co.

**4. Construction Lien Act**

- 4.1 Nothing in this Schedule shall be construed to affect prejudicially the rights of any person to preserve or perfect a lien under the Act, or the enforcement of any other rights under that Act, to the extent that such rights apply with respect to that person.

**5. Certification of Completion**

- 5.1 The onus of establishing the supply of any materials and completion of the Project Facilities shall lie on Project Co, which shall submit such proof thereof as the Independent Certifier may reasonably require. Project Co shall include a statement based on the schedule of values at the time of requesting certification of Completion.

**FORM 1**

**APPLICATION FOR CERTIFICATION OF COMPLETION**

To: *[Name and address of Certifier]*

From: *[Name and Address of Project Co, with copy to architect of record, or vice versa]*

Re: *Contract No. [specify] of Ontario Infrastructure Projects Corporation, as agent for Her Majesty the Queen in Right of Ontario, ("HMQ"), being an Agreement (the "Agreement") dated [specify], between HMQ and Access Justice Durham Ltd. providing for, inter alia, the design and construction of the Project Facilities*

***[Note: This Application is subject to the terms and conditions of Schedule D (Completion Certification) of the Agreement and any revision required by such Schedule should be made to this Application, if applicable.]***

*Under and subject to the terms and conditions of the above Agreement, the undersigned hereby applies for the certification of the Completion of the Project Facilities. In support of that application, I hereby certify that:*

- (a) subject to section (c), the Project Facilities in their entirety are ready for use or are being used for the purposes of normal courtroom and court office operations except for Minor Matters;*
- (b) the following items have been delivered to HMQ and the Independent Certifier: (i) the applications programming and related documentation for all microprocessor based controllers for the Project Facilities; and (ii) copies of all operating instructions and maintenance manuals relating to the Project Facilities and the operation thereof as well as as built drawings relating to security systems at the Project Facilities (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems);*
- (c) all New MAG FF&E has been installed into the Project Facilities and is ready for use and defect free, except for Minor Matters;*
- (d) all Governmental Authorities having jurisdiction have confirmed (and issued all pertinent documents in respect thereof, as available) that all buildings and structures on the Site are ready for occupancy;*
- (e) Project Co's architect of record has issued a letter of confirmation to HMQ and the Independent Certifier indicating that all building and systems at the Project Facilities are ready for use except for Minor Matters and to the best of its knowledge have been built in accordance with the HMQ Design Requirements;*
- (f) all Police Systems Rough-In has been completed in accordance with the requirements set forth in the Police Systems Design Development Documents;*

- (g) *there are no Encumbrances (including, for certainty, construction liens under the Construction Lien Act (Ontario)) registered on the Site or the Project Facilities other than Permitted Encumbrances; and*
- (h) *the commissioning program and procedures set forth in the Project Co Commissioning Program for the Project Facilities have been carried out successfully and in full, subject to Section 3 of Schedule D (completion Certification) of the Project Agreement and subject to such Commissioning which is identified in the Project Co Commissioning Program to be conducted after the Completion Date.*

*Without limiting the generality of the foregoing, it is further certified that:*

- (i) *All work to be done with respect to the design and construction of the Project Facilities have been completed in accordance with the terms of the Agreement (other than Minor Matters), and in so doing has been carried out in a competent and professional manner.*
- (ii) *There are no latent defects in such work of which the undersigned is aware, having made all reasonable inquiries and conducted (either directly or by the Project Co Representative on Project Co's behalf) appropriate tests to confirm the absence thereof.*
- (iii) *Project Co is in compliance with all of the requirements of the Construction Lien Act (Ontario), as of the date of this certificate.*
- (iv) *Attached to this certificate is evidence confirming the delivery of:*
  - (I) *the applications programming and related documentation for all microprocessor based controllers for the Project Facilities; and*
  - (II) *copies of all operating instructions, maintenance manuals, spare parts and materials relating to the Project Facilities and operation thereof as well as as built drawings relating to security systems at the Project Facilities (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems).;*
- (v) *The estimated cost of completion of Minor Matters described in section (c) is \$[specify]*

*It is hereby acknowledged that the issue of a certificate of Completion does not constitute, and shall not be construed, as a waiver of any defect in the work or in the materials supplied in connection therewith (whether latent or otherwise), or any other breach by Project Co of any of its obligations under the Agreement, whether known or not known to HMQ at the time of the issue of a Completion Certificate in respect of this Application.*

*Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agreement.*

*ACCESS JUSTICE DURHAM LTD.*

---

*(Name and Signature of Authorized Signing Officer)*

**Form 2**

***Durham Consolidated Courthouse***

***Completion Certificate***

*This is to certify the Completion of the Project Facilities contemplated under Contract No. [specify] of Ontario Infrastructure Projects Corporation, as agent for Her Majesty the Queen in Right of Ontario, ("HMQ"), being an Agreement (the "Agreement") dated [specify], between HMQ and Access Justice Durham Ltd. providing for, inter alia, the design and construction of the Project Facilities.*

*This certificate does not relieve Access Justice Durham Ltd. of any of its outstanding obligations under the Agreement, including the obligation to rectify and make good any defective work or materials as may be requested by HMQ under or in accordance with that Agreement.*

*Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agreement.*

*The Date of Completion is: [specify]*

*Dated: [specify]*

---

*(Signature of Certifier)*

**DURHAM CONSOLIDATED COURTHOUSE**

**REVISED FACILITIES MANAGEMENT SPECIFICATIONS**

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## 1. DEFINITIONS

Capitalized Terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement

- 1.1 “Ad Hoc Services” means the ad hoc services to be provided by Project Co pursuant to a Service Category that are in addition to the scope of services set out in the Service Categories and for which a cost impact and possibly a price will be established. Ad-hoc services are not to be confused with ancillary services which are services that are dependent on Project Co’s specific tailored solution to a Service Standard.
- 1.2 “Agreement” means the Project Agreement between HMQ and Project Co dated as of March 1, 2007 for the Design, Construction and Facilities Management of the Durham Consolidated Courthouse.
- 1.3 “Asset Activity Report” means an output of the Asset Register that provides periodic information on the status of the Project Assets and MAG FF&E.
- 1.4 “Asset Register” means a medium to list and track all Project Assets and MAG FF&E and their condition, it is to be updated as new information is collected with respect to the assets and should reflect the latest status of each such asset including its replacement date, latest recorded performance condition, deficiency history and major repair work done.
- 1.5 “BOMA Go Green Plus Program” means the certification program of the Building Owners and Managers Association.
- 1.6 “Building, Fixtures and Environment” means the Durham Consolidated Courthouse building, fixtures in and around the building and the area in the immediate vicinity of the building to include all areas within the legal description contained in Part I of Schedule A.
- 1.7 “Building Management System (BMS) Reporting Requirements” means those building management system (BMS) reporting requirement services to be carried out pursuant to a Service Category.
- 1.8 “CD&R” means construction, demolition and renovation.
- 1.9 “Class Environmental Assessment Process” means the process to be followed by Project Co to fulfil the environmental assessment requirements.
- 1.10 “Cleaning Services” means the services described in Sections 5 and 6.

- 1.11 “Cleaning Quality Standards” means the cleaning expectations for the Project Facilities.
- 1.12 “Contingency Plan” means a plan developed by Project Co to deliver services required by this agreement in case there are Events or Failure Events.
- 1.13 “Demand Maintenance” means all ad hoc maintenance and repairs required on the Project Facilities other than Scheduled Maintenance. Demand Maintenance performance will be subject to the Rectification Time provisions in Table 1. Demand Maintenance includes all maintenance and repairs to specific items of Project Assets in response to malfunctions and the provision of minor repairs, adjustments and general maintenance as follows:
- (i) first response to equipment malfunctions and assessment of the problem (e.g., operator error, utility problem, minor or major failure) and required response;
  - (ii) performance of minor repairs and general maintenance including filter changes, topping-up fluids, adjustments, resets, clearing blockages and replacing minor parts such as rollers, wheels, pulley and hoses; and
  - (iii) 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.
- 1.14 “Design & Construction Phase” means the design and construction phase of Project Works.
- 1.15 “Detailed Scheduled Maintenance Program” means a work program produced by Project Co for the Project Facilities and submitted to HMQ describing the maintenance work to be carried out by Project Co.
- 1.16 “Effective Age” means the estimated life of a Project Asset based on its use, wear and tear, maintenance and repair history, technological obsolescence and as certified by an independent certifier. The Effective Age may be different than its Physical Age.
- 1.17 “Element” has the meaning ascribed to it in the Payment Mechanism.
- 1.18 “Elevator/Escalator Availability” means a percentage of time for which the elevator/escalator is available over a Contract Month.
- 1.19 “End-of-Useful-Life-Dates” means the date stipulated in the Replacement Life Cycles or such earlier date required as a result of wear and tear.
- 1.20 “Emergency” means any event which is life or limb threatening or serious enough to cause significant economic or environmental damage.

- 1.21 “Emergency Evacuation Plan” means a plan prepared by MAG for the safe timely and orderly evacuation of building occupants in the event of an emergency.
- 1.22 “Employment Standards Act” means the Employment Standards Act Ontario or any successor statute.
- 1.23 “Environmental Services” means the services ascribed in Section 12.
- 1.24 “Equipment and Systems” means Project Assets FM Components that are to be maintained and replaced by Project Co.
- 1.25 “Equipment and Systems Serviceability Report” means an annual report prepared by Project Co for issuance to HMQ reporting on the Project Assets maintenance during the year.
- 1.26 “Event” has the meaning ascribed to it in the Payment Mechanism.
- 1.27 “Facility Condition Assessment” means an independent assessment conducted by a third party of all of the Project Assets.
- 1.28 “Facilities Management (FM)” means services to be provided by Project Co as a caretaker of the Project Facilities.
- 1.29 “Failure Event” has the meaning ascribed to it in the Payment Mechanism.
- 1.30 “Five Year Life Cycle Renewal Report” means the report to be produced by Project Co as part of its Life Cycle Renewal Services.
- 1.31 “Fire Management Plan” means the establishment and implementation of procedures for fire drills on all work shifts in liaison with Plant Services, the fire authority, or as required by regulations in relation to the Project Facilities, which shall ensure, in coordination with Plant Services, that fire drills are carried out as agreed with the fire authority or as may be directed by HMQ or other authorized person and ensures minimal response time in response to building fire alarms.
- 1.32 “Fire Management Maintenance Program” means the program designed by Project Co, agreed to by HMQ and as coordinated with Security Services.
- 1.33 “FM Component” means a part or a whole of equipment or a building system that is required to be replaced from time to time and forms a sub-set of a Project Asset.

- 1.34 “FM Element” means the grouping of services under the Service Categories of Interior Cleaning, Exterior Cleaning or Plant Services to be used by Project Co for reporting purposes.
- 1.35 “Food Services” mean the services described in Section 15.
- 1.36 “Food Services Plan” means a plan describing the food services to be provided by Project Co.
- 1.37 “Functional Part” has the meaning ascribed to it in the Payment Mechanism.
- 1.38 “Furniture and Office Equipment Services” means the services described in Section 17.
- 1.39 “General Manager” means the designated contact person that represents Project Co who will provide overall coordination and liaison with HMQ.
- 1.40 “General Management Services” means all of the requirements of this Service Category.
- 1.41 “Grounds Maintenance and Landscaping Services” means the services described in Section 7.
- 1.42 “Help Desk” means the Help Desk described in Section 11.
- 1.43 “Help Desk Services” means the services described in Section 11.
- 1.44 “HMQ” has the meaning ascribed to it in the Agreement.
- 1.45 “Independent Inspector” means the inspector appointed by HMQ and Project Co to assess the Effective Age of an FM Component.
- 1.46 “Information Management Maintenance Program” means the program designed by Project Co and agreed to by HMQ for the Plant Services information management.
- 1.47 “Initial Operational Phase” has the meaning ascribed to it in the Payment Mechanism.
- 1.48 “Integrated Security System Operations and Monitoring” means the system and procedures in place to operate and maintain an integrated security system for the Project Facilities.
- 1.49 “LEED” means Canada Green Building Council’s Leadership in Energy and Environmental Design, or as applicable, LEED for Existing Buildings, and is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.

- 1.50 “Life Cycle Maintenance” means the required maintenance and replacement activity in order to keep the Project Assets in serviceable condition consistent with the Service Standards.
- 1.51 “Life Cycle Renewal Plan” means development and maintenance of an auditable quality plan on an annual basis informing on the expected replacements of Equipment and Systems.
- 1.52 “Life Cycle Renewal Equipment and Systems Serviceability Report” means the annual report detailing the Project Assets replacements over the past year and plans for the coming year.
- 1.53 “Life Cycle Renewal Services” means the services described in Section 14.
- 1.54 “MAG” means Ministry of the Attorney General.
- 1.55 “MAG FF&E” means FF&E other than Non-MAG Occupant FF&E.
- 1.56 “Materials” mean those products necessary for the provision of the relevant services.
- 1.57 “Material Selection Policy” means the material selection policy that Project Co will develop and implement at the Project Facilities consistent with BOMA Go Green Plus Program.
- 1.58 “Material Services” means on behalf of MAG, the acquisition, receipt, storage and distribution of inventoried items, mail, courier packages and other materials that are necessary for the Courthouse Activities..
- 1.59 “Monthly Maintenance Report” means a report prepared for each Contract Month issued to HMQ which includes all maintenance (undertaken in that month); a schedule of all failures to comply with the requirements of any Service Category and Project Co’s procedures in connection with the provision of Plant Services as agreed with HMQ; details of training of personnel, changes of personnel and changes to established working practices that have occurred in that month and that shall be undertaken during the next two Contract Months; such reports as required by Applicable Law, informing HMQ which statutory reports have been carried out and making available to HMQ copies of such reports.
- 1.60 “Monthly Monitoring Report” has the meaning given to it in Section 4.3.1.
- 1.61 “Non-MAG Occupant FF&E” has the meaning ascribed to it in the Agreement.
- 1.62 “Occupational Health and Safety Regulations” mean the relevant and current rules and regulations, as amended from time-to-time by the relevant authorities, which govern the operations of the Project Facilities.

- 1.63 “Operations Communications Plan” means a plan to be developed by Project Co on an annual basis to inform HMQ of its intentions vis-à-vis its internal operations at the Project Facilities.
- 1.64 “Operational Protocol” means the framework as amended from time to time outlining Service Standards and interactions between Project Co and HMQ.
- 1.65 “Original Equipment Manufacturer’s Warranty” means the warranty and guarantees provided by the original manufacturers of Equipment and Systems.
- 1.66 “Overall Management Services” means the services described in Section 4.
- 1.67 “PMP” means the Performance Monitoring Program.
- 1.68 “Parking Services” means the services described in Section 16.
- 1.69 “Payment Mechanism” means Schedule F to the Agreement.
- 1.70 “Performance Monitoring” means those performance monitoring services to be carried out pursuant to a Service Category.
- 1.71 “Performance Monitoring Program (PMP)” means the program that outlines the actions Project Co intends to undertake to monitor the performance of the services provided to HMQ, including but not limited to monitoring Events, Failure Events and Unavailability Events as well as reporting to governmental agencies, and re-commissioning reports by third part contractors...
- 1.72 “Periodic Monitoring Report” means the report prepared by Project Co in accordance with the relevant aspects of various tasks.
- 1.73 “Physical Age” means estimated life of an asset based on its depreciated history. The Physical Age may be different from its Effective Age.
- 1.74 “Plant” means the Project Assets which are the infrastructure, building, fixed and immovable equipment systems installed and as replaced from time-to-time.
- 1.75 “Plant Services” means the services described in Section 10.
- 1.76 “Plant Services Information Management System” means a system provided by Project Co to provide user friendly Plant Services information, produce reports on Plant Services records and information as required by HMQ or other authorized department or agency, provide accurate and timely information to Project Co in the administration of Plant Services operations and ongoing business, and backup and store data, materials and documents in safe custody.



- 1.77 “Policy and Procedure Manual” means the manual of policies and procedures created by Project Co, and approved by HMQ, that provides operational guidance for the delivery of each Service Category.
- 1.78 “Pro-Active Cleaning Service” means Project Co, independently of HMQ or MAG Occupants, identifying and responding to ad-hoc, Emergency, or urgent cleaning requirements at all times.
- 1.79 “Project Assets” has the meaning ascribed to it in the Agreement.
- 1.80 “Project Co” is the term used to identify the entity or the entities that will be responsible for the provision of the Facilities Management services.
- 1.81 “Quality Assurance Program” means the program developed by Project Co to maintain quality of services, the results of which are provided to HMQ as well as independent users’ satisfaction surveys.
- 1.82 “Quality Monitoring” means those quality monitoring services to be carried out pursuant to each Service Category to include, but not limited to, customer satisfaction surveys, Quality Assurance Program, BOMA GO Green and LEED certification reporting.
- 1.83 “Quality Satisfaction Failure” means the service(s) provided pursuant to a Service Category specification failure to meet ‘acceptable’ customer satisfaction levels. In this context acceptable is deemed to be an acceptable level as per the Quality Assurance program. The survey is to be performed by a third party.
- 1.84 “RFP-2 Volume I” means the Request for Proposal II Volume I issued to shortlisted proponents.
- 1.85 “Reactive Cleaning” means the cleaning service from Monday to Friday, 8 am to 5 pm, provided to address ad-hoc, Emergency, urgent and/or routine cleaning requests as well as bail court requirements (when such issues are brought to the notice of Project Co).
- 1.86 “Rectification Time” means the time allowed to correct an Event before it becomes a Failure Event or an Unavailability Event as per Table 1 in Section 3.1.6.
- 1.87 “Replacement FM Component” means a part or a whole of an equipment or building system that replaced a FM Component.
- 1.88 “Replacement Life Cycles” means the scheduled periods for replacing systems, equipment and FM Components as prescribed in the attachment to Section 14.

- 1.89 “Response Time” means the time allowed to acknowledge an Event as per Table 1 in Section 3.1.6. The acknowledgment of an Event could be by any means that is deemed acceptable between Project Co and HMQ as per the accepted Operational Protocol and could include verbal, written or electronic communication.
- 1.90 “Response Time and Rectification Time” means the time in which Project Co is required to resolve an Event.
- 1.91 “Review Procedures” means the procedures described in Schedule N to the Agreement.
- 1.92 “Rolling 5 Year Maintenance Plan” means a plan produced by Project Co for the Project Facilities including Life Cycle Maintenance and planned improvements and replacement programs.
- 1.93 “Routine” means any Event that is not seen as immediately detrimental and not causing significant operational problems.
- 1.94 “Scheduled Maintenance” means the planned and programmed activities by Project Co to carry out planned preventative maintenance requirements on a scheduled basis on Plant and all associated equipment in accordance with Section 14.
- 1.95 “Schedule of Replacement Life Cycles” means the services described in Section 14.
- 1.96 “Security Services” means the services described in Section 8.
- 1.97 “Session” has the meaning ascribed to it in the Payment Mechanism.
- 1.98 “Service Category” means the specific grouping of same or similar services to be provided by Project Co.
- 1.99 “Service Failure Point” has the meaning ascribed to it in the Payment Mechanism.
- 1.100 “Service Priority” means the level of importance of an Event, Failure Event or Service Request and the Response Time and Rectification Time attached to such a priority.
- 1.101 “Service Request” means a request made by HMQ or MAG through the Helpdesk which Project Co shall track to ensure rectification within the prescribed rectification times.
- 1.102 “Service Standards” means the standards ascribed to each Service Category.
- 1.103 “Space” has the meaning ascribed to it in the Payment Mechanism.

- 1.104 “Special Projects Services” means the services described in Section 13.
- 1.105 “Unavailability Event” has the meaning ascribed to it in the Payment Mechanism.
- 1.106 “Urgent” means an Event that could reasonably be expected to cause operational problems if not attended quickly or which could reasonably be expected to develop into an Emergency if not remedied.
- 1.107 “Utilities” means energy/power supplies and waste recovery, including electricity, telephone, natural gas/fuel oil, water, sanitary waste and storm water including Energy Utilities.
- 1.108 “Utility Company” means any company or companies designated by Project Co or HMQ to provide Utilities.
- 1.109 “Utilities Management Services” means the services described in Section 9.
- 1.110 “Vendor of Record” means the list of suppliers or vendors that were qualified by the Ontario Government to provide services and products.
- 1.111 “Workers Compensation Act and Regulations” mean the relevant and current rules that regulate workers compensation at the Project Facilities.

## **2. INTRODUCTION**

This Schedule describes the Facilities Management services that Project Co is required to provide throughout the life of the Agreement. These obligations are specified for all Service categories but these Facilities Management Specifications do not necessarily list all of the activities and steps that Project Co must perform in order to satisfy HMQ's Facilities Management requirements. Project Co shall tailor its solutions to these requirements. In some instances, HMQ's Facilities Management requirements include a list of specific standards that must be satisfied.

### **2.1 Operating Environment**

Given the particular nature of the courthouse operations, the following illustrates the environment which Project Co needs to be aware of in order to design service solutions that are consistent with the expectations of the MAG Occupants, Non-MAG Occupants and Courthouse Service Users.

The Durham Consolidated Courthouse (DCC) will consolidate into one location all Superior Court of Justice and Ontario Court of Justice courts in Durham Region. Currently, Durham Region courts are located in six separate sites.

The DCC will house all types of court proceedings: criminal, civil, family and small claims. The courthouse must therefore be capable of accommodating a diverse set of court users and participants in the court process: judiciary and justices of the peace, criminally accused (both in and out of custody), police and social service agencies, victims and witnesses, jury members, crown attorneys, lawyers, and civil and family litigants (who may or may not be represented by counsel). In addition, the courthouse must be open to the public and capable of accommodating members of the public (and the media) who wish to enter and view courtroom proceedings.

The courthouse is an unpredictable environment compared to other public institutions, given the adversarial nature of the court process and the often high emotions of litigants who are uncertain of the outcome of their court case; outcomes that might result in, for example, incarceration, civil monetary judgments, criminal fines, loss of property, domestic restraining orders, or loss of child visitation or custody rights.

The DCC will house a workforce of about 550 people including judges, Ministry of the Attorney General staff, social agencies, police, and Crown Attorneys and private legal counsel. The DCC must be able to accommodate a maximum daily combined volume of 2,500 staff, visitors and individuals in custody.

The court services counter is open to the public Monday to Friday, 8:30 a.m. to 5:00 p.m. Courtroom operating hours depend on the number of matters listed on the court docket or brought before the court, and may continue past 5:00 p.m. Court is scheduled on weekends

and statutory holidays and can run late into the evening due to jury deliberations and other emergency matters being heard in court.

Secure courthouse access is required seven days a week, including after hours, for users who have offices within the courthouse. As a large busy courthouse, caseload variations are volatile, and the numbers of courthouse visitors will vary. High public use will occur on jury selection days. In addition, highly publicized court cases can attract increased courthouse attendance, media and public attention. Hostile and disruptive demonstrations, and safety and security threats (e.g. bomb threats), require the implementation of security measures.

The courthouse will have three separate circulation systems:

- Public
- Private judicial
- Private in custody

These systems will restrict access to specified areas of the building in order to ensure the security of all court users. Courthouse safety and security are critical elements of the courthouse environment. In addition, courthouse operations are an essential public service, and cannot be permitted to shut down for any extended period of time without serious consequences to public safety and the administration of justice.

Courthouse operations, health, safety, and security require strict adherence to performance standards and response protocols. Facility management must respond quickly and effectively to altercations, spills, malfunctioning systems and other occurrences that can impact health, safety, and the continuation of court proceedings. DCC will create building maintenance demands under unusual, hard-use situations.

The following highlights some court operation elements that can impact facilities management.

**Jury Panel Selection:** In Durham, jury panel selection occurs the first three Mondays of each month with jury panels remaining on site until the jury is selected. This process can involve 150-300 people who attend the courtroom to be selected or screened out. The process may be subject to unavoidable delays as people are selected as jurors or excused one-by-one throughout the process. The jury selection process can take several days to complete. All members of the jury panel must be present until they are selected or dismissed by the judge.

**First Appearance Court:** First Appearance Court (for adult and youth persons accused of criminal offences) is the heaviest volume court. It generally requires that clients and lawyers be available at the start of court and may have waiting times of several hours before their matters are heard. First Appearance Court is scheduled 5 days per week and includes two days per week for youth first appearance, which is often run by video conferencing, where the accused remains at the police station or correctional facility.

**Holding Cells:** [REDACTED]

**Bail Court and Weekend and Statutory Holiday Court (WASH):** Bail court is scheduled 365(6) days a year. People arrested are legally entitled to appear before a judicial officer within 24 hours of arrest. Bail court involves the presence of the accused person, their legal counsel and sureties. At this time, WASH court is a bail and remand court that most often proceeds by way of video conferencing. Video does not require the prisoner's physical presence and the prisoner will remain incarcerated at the police station or the correctional facility. WASH court generally operates from 9:30 am to 3:00 pm. The court clerk arrives at 8:15 am.

**Building Maintenance:** Facility conditions and cleanliness can affect the confidence in, and dignity of, the justice system. Cleanliness is essential for all public holding cells and judiciary space. In addition to regular building maintenance, particular attention is required to ensure conditions do not present safety and security hazards, such as poor lighting, exterior vegetation growth, and bottles or other debris that can be thrown. Power washing of holding cells is required, at a minimum, on a bi-monthly basis. Courthouse clients and adversaries will be in close proximity. Intimidation, verbal and physical altercations can ensue. Regular monitoring and prompt and effective response to problem areas is required. Building maintenance and repairs (e.g. noise and/or odors such as paint or adhesives) cannot disrupt court proceedings in any way. Work that might impact court is to be scheduled after hours or on weekends and must have prior approval from the court service management. Other work will include moving of furniture, hanging pictures, monitoring and adjusting of the heating and cooling system, and arranging air quality testing as required. Outside contractors must receive CPIC security clearances and all entry to secure areas must be approved in advance.

The intent of HMQ is to certify the DCC is using the Canada Green Building Council's Leadership in Energy and Environmental Design green rating system (LEED). The Proponents should review the LEED Canada Reference Guide while developing their proposed solutions.

### **3. GENERAL REQUIREMENTS**

**3.1** The following general requirements represent the minimum standards to which Project Co is required to deliver:

**3.1.1** Project Co shall provide high level quality, efficient, innovative and flexible specific services 24-hours per day, 365(6) days per year, unless otherwise specified, on a scheduled and reactive basis as may be required to meet the Service Standards. Project Co shall achieve the following objectives:

- (a)** Provide a sufficient number of qualified, trained and competent employees or subcontractors with the skills necessary to meet the Service Standards.
- (b)** Develop and maintain an auditable quality plan for each Service Standard consistent with Good Industry Practice and acceptable to HMQ. The auditable quality plan is to include, but not be limited to, customer satisfaction surveys, Quality Assurance Program, BOMA Go Green and LEED Certification reporting.
- (c)** Research and develop new service delivery methods and apprise HMQ of their benefits.
- (d)** Manage matters and marshal resources to participate in Emergency responses and to provide a high level of customer care consistent with Good Industry Practices and continuous innovation.

**3.1.2** There may be services to be performed that are not specifically described herein, but that are a necessary ancillary to the Service Category and these shall be performed by Project Co as part of Project Co's specific tailored solution. Ancillary services are distinct from Ad-Hoc Services that are requested by HMQ from time to time.

**3.1.3** The services detailed within each Service Category describe specific aspects of the Service Standard but shall form part of an integrated facilities management solution and accordingly, Project Co shall integrate and coordinate each specific Service Category with all other Service Categories to provide integrated and complete facilities management services.

**3.1.4** Project Co shall exercise reasonable and competent supervision of the work at all times and of all of its Project Co Staff and Subcontractors performing services under the Agreement.

**3.1.5** In providing these services, Project Co will also consider the needs and interest of:

- (a)** MAG Staff (permanent space)
- (b)** The judiciary (permanent space)
- (c)** The Durham Regional Police Services (permanent space)
- (d)** The "In-custody" (permanent space)
- (e)** Legal Aid Ontario (permanent space)
- (f)** Social services agencies (permanent space); note that not all social service agencies will have permanent space
- (g)** Legal professionals
- (h)** Volunteers and visitors
- (i)** General public
- (j)** External subcontractors to HMQ

**3.1.6** The following table (Table 1) shall guide Project Co in determining the level of responsiveness and rectification. Unless otherwise indicated, these parameters shall be adhered to at all times. These parameters apply to all situations to determine if rectification occurred within the specified timeframe. Project Co must ensure that its internal reporting system keeps track of all reported Events, Failure Events and Unavailability Events, and tracks their resolution and reports on them periodically as specified in the relevant Service Standards. The Service Priority will be determined using the definition in Table 1 below. Project Co will propose as part of its Operational Protocol (see Section 4.11 for more details) situations when the different Service Priorities will apply. HMQ will have the final approval on the Service Priorities to be in effect from time to time throughout the Agreement Term.

**Table 1**  
**Event, Failure Event or Request for Service Priorities, Response and Rectification Times**

<b>Service Priority</b>	<b>Definition</b>	<b>Response Time</b>	<b>Rectification Time</b>
Emergency	Any request for a service which is required to avoid an Emergency.	Immediately (5 minutes)	1 hour (or as reasonably required by the nature of repair)
Urgent	Any issues that shall cause operational problems if not attended to quickly, or which may develop into an Emergency if not remedied. Any request for a service which requires attendance quickly, to avoid operational problems or an Emergency if not remedied.	15 minutes	2 hours (or as reasonably required by the nature of repair)
Routine	Any issues that are not seen as immediately detrimental and not causing significant operational problems. Any request for a service that is not seen as immediately detrimental and not causing significant operational problems if not attended to.	2 hours	24 hours dependent on temporary rectification (or as reasonably required by the nature of repair)

In certain cases a super Emergency situation may require rectification in less than an hour, for example presence of a hazardous material in the lobby. Project Co acknowledges that the maximum times identified for rectification are upper limits and that rectification may have to occur in a shorter time as the situation warrants. HMQ



may advise Project Co from time to time of other situations when this will apply. It is understood that if HMQ changes the Service Priorities, this will constitute a Change under this Agreement.

- 3.1.7** Notwithstanding the Service Standards specified in each Service Category, for greater certainty, the priority precedence in the Service Standards is as follows:
- (a)** Any jurisdictional clauses or municipal codes;
  - (b)** Prescriptive requirements in this document;
  - (c)** Identified specific industry standards (such as CSA or ASHRAE) and as amended from time to time;
  - (d)** Manufacturer or OEM recommended practice in order to ensure warranty is maintained;
  - (e)** Un-identified industry standards to be quoted by Project Co that are consistent with Good Industry Practices;
  - (f)** Project Co best practices and rationale for applying such practices; and
  - (g)** Other sources to be identified and the rationale provided for its application.

## **4. OVERALL MANAGEMENT SERVICES**

The Overall Management Services described in this Section are to be provided by Project Co.

### **4.1 Management and Administration**

**4.1.1** Prior to the Completion Date, Project Co shall develop and maintain a procedure to ensure regular periodic liaison between Project Co's managers and supervisors and HMQ's Representative or designate to facilitate the delivery of services and to ensure that Project Co and HMQ are kept abreast of the day-to-day specific requirements of the Elements. Project Co shall develop a series of management information reports as agreed with HMQ's Representative or designate in a form acceptable to HMQ. Project Co shall:

- (a)** Ensure that systems and controls are in place to safeguard property, MAG Occupant information and confidentiality in all services, and appropriate records are kept and available for inspection.
- (b)** Coordinate communication and liaison between Subcontractors and Project Co and, as may be required from time to time, between Subcontractors and HMQ.
- (c)** Implement a comprehensive system of controls in the form of management reports relating to the delivery of the services, and make these available to HMQ on request acting reasonably.
- (d)** Analyze each of the services at least annually and produce a report that details any proposals for changes to the services or the procedures used, the likely impact of those changes, the financial implications of the changes, the impact of the timing of such changes or HMQ's ability to carry out its functions, and any other matter which HMQ may reasonably require.
- (e)** Provide to HMQ on request and within 24 hours information that is not commercially sensitive for HMQ's internal and external public relations.
- (f)** Notify HMQ within 5 minutes of Project Co becoming aware of any hazard that could lead to delays in court or which has or may result in serious injury or life threatening outcome to occupants on the Site. The notification requirements shall be in line with those established by Project Co as part of the Policy and Procedure Manual for each Service Category.

**4.1.2** In connection with the provision of the Facilities Management services, Project Co's management staff shall liaise with:

- (a)** HMQ's Representative or designate when undertaking or preparing to undertake action in respect of works or services which may significantly impact upon the delivery of court services or upon the comfort and/or well being of the MAG Occupants, Non-MAG Occupants and Courthouse Users.
- (b)** External advisors and Governmental Authorities in respect of the services provided as required.

**4.1.3** Include the provision of all necessary information technology, telephone and communication equipment and software required by Project Co to deliver all the FM services, such equipment and system shall be able to interface with HMQ as described in Section 4.3.5.

- 4.1.4 Project Co shall provide a General Manager (or designate) available and contactable 24 hours per day, 365(6) days per year, for all purposes connected with all Service Categories, who shall provide overall coordination of all specified services on-site. Project Co's management team will oversee the day-to-day operations and will establish necessary policies, QA (quality assurance) systems, controls assurance and abide by Applicable Law to ensure delivery of high quality FM services. The General Manager or designate shall be available to directly interface with HMQ's Representative or designate to resolve operational issues in an expeditious manner.
- 4.1.5 Project Co shall make provision for and co-operate with HMQ in the management of visits by government officials, dignitaries, etc.
- 4.1.6 Project Co, its employees and its Subcontractors' employees shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every sixth Contract Month, Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.
- 4.1.7 The operational policies and procedures are intended to guide the on-going operations and maintenance activities at DCC. While every Service Category has a specific requirement for the development of operational policies and procedures, Project Co may elect to develop one set of policies and procedures to cover all Service Categories. The set of policies and procedures may also be imbedded in the Operational Protocol as described in Section 4.11.
- 4.1.8 Project Co will provide emergency incident support by raising alarms, reporting events to internal and external authorities and logging details.
- 4.1.9 Project Co staff will conduct visual inspections of the premises and, where warranted, initiate service work orders to rectify problem situations and log corrective action taken.

## **4.2 Performance Monitoring**

- 4.2.1 Project Co shall be committed to continuous improvement and shall implement systems to facilitate this objective. Some outputs described within each Service Category have a corresponding performance parameter that describes the criteria used to determine whether Project Co has delivered the service to the Service Standards required. The performance parameters are provided at the end of each Service Category in tabulated form and provide a list of potential Failure Events for each Service Category and a reference to the Service Category against which Project Co's actual performance is assessed. All performance parameters are assessed on a pass or fail basis subject to Rectification Times as per Table 1 in Section 3.1.6. For greater clarity, Failure Event occurs when Project Co fails to provide a Service in accordance with a specific Service Standard within the relevant Rectification Time (as distinguished from an Unavailability Event).
- 4.2.2 Project Co shall at all times have in place a Performance Monitoring Program (PMP) for all of the Service Categories. The PMP will outline the actions Project Co intends

to undertake to monitor the performance of FM services provided to HMQ. The PMP will at all times permit HMQ to assess whether or not Project Co has met the performance Service Standards. The PMP shall include, but not be limited to, the following types of monitoring methods:

- (a) Records of communications by Project Co and/or HMQ with the Help Desk or General Manager.
- (b) Self-monitoring by Project Co (in accordance with the PMP).
- (c) Independent user satisfaction surveys for each Service Category as part of its Quality Monitoring Program.
- (d) Review reports by Governmental Authorities.
- (e) Facilitating/assisting HMQ audits. HMQ audit measures shall include, but not be limited to, analysis of complaints, random visits (checking of appearance and cleanliness), user surveys validation checks of Project Co data and deliberate testing. For the avoidance of doubt HMQ has the right to inspect any area of the Project Facilities to ensure that services are performing to the Service Standards in the Service Category. HMQ is entitled to report any Events, or potential Events, to the Help Desk. The Help Desk records must be available for inspection by HMQ at all times, Monday to Friday, 9:00 am to 5:00 pm, and at all other times on reasonable request.
- (f) A re-commissioning report by a third party contractor.

**4.2.3** As HMQ is committed to the concept of self-monitoring by Project Co, its expectations are that Project Co will have its interests aligned with HMQ and that they will jointly work in unison to deliver outstanding services, as per the specific Service Standards, to MAG Occupants, Non-MAG Occupants and Courthouse Service Users. HMQ expects Project Co to institute a process to provide incentives to its employees and subcontractors to adhere to the notion that self-monitoring and reporting is done comprehensively and honestly. In the event that HMQ discovers that the reporting is not as specified it will escalate the matter as per the process described in the Payment Mechanism.

### **4.3 Periodic Reporting**

**4.3.1** Project Co shall prepare a Monthly Monitoring Report and deliver it to HMQ within 5 Business Days after the end of each Contract Month. The Monthly Monitoring Report will be subject to Dispute Resolution and the Review Procedure and shall include, but not be limited to, the following information regarding the Contract Month just ended:

- (a) All statistical data required for any provincial or federal reports/returns, including per period worked hours and billings by Service Category.
- (b) Monitoring which has been performed in accordance with the PMP, with a summary of the findings.
- (c) A summary of all Events reported to the Help Desk and/or the General Manager, including the required Response Time and Rectification Time, and the actual Service Response Time and Rectification.

- (d) A summary of all Failure Events and Unavailability Events and identification of the Space affected.
- (e) The relevant volume related data and any volume adjustments to be made in respect of the Contract Month.
- (f) The number of Service Failure Points awarded in respect of Failure Events and Unavailability Events on a daily basis together with the rolling totals for the preceding 14 Contract Months (in aggregate and by Service Category) and highlighting performance relative to the Service Failure Point levels described in Article 31 of the Agreement.
- (g) If for any Contract Month, a Painshare Adjustment or a Gainshare Adjustment is calculated in accordance with Schedule M (Energy Matters) of the Project Agreement, all relevant information to substantiate that calculation.

**4.3.2** All reports provided by Project Co will clearly identify the Space and/or Service Category in which Failure Events have occurred.

**4.3.3** Project Co shall on an annual basis provide HMQ with a report on the latest trends and best practices in the facilities management field gained from Project Co experience with the management of facilities other than DCC and attendance at relevant seminars and conferences.

**4.3.4** The format of periodic reports provided by Project Co will be subject to approval by HMQ prior to the Completion Date. The format of such reports will be amended and changed during the term of the Agreement as agreed by Project Co and HMQ, both acting reasonably. During the Initial Operational Phase (see 4.11) Project Co will work closely with HMQ to ensure that the reporting requirements are consistent with the Operational Protocol.

**4.3.5** Project Co shall establish and maintain an electronic database for all information related to the Project Facilities. This database shall be web based and consistent with RealSuite ASP Solutions and be able to upload information to RealSuite ASP Solutions. HMQ will provide Project Co with the necessary data elements that will be required to be uploaded to RealSuite ASP Solutions.

**4.3.6** Project Co shall establish a system and a process to provide the periodic reports included at the end of this Section.

## **4.4 Human Resources**

### **4.4.1 Recruitment and Orientation**

- (a) Project Co shall develop and implement appropriate operational policies, procedures and practices, together with its customer service philosophy, relative to recruitment and orientation prior to commencement of services, which shall include, but not be limited to:
  - Job role descriptions, tasks and responsibilities; reporting relationships for the role

- Geography of the Site and Project Facilities.
  - Interaction with lines of communication between Project Co and HMQ
  - Knowledge of Applicable Law and MAG policies and practices as advised by MAG or HMQ from time to time
  - Project Co's policies on health and safety, and all other policies
  - Use of machines relevant to the provision of the services
  - Handling, storage and use of cleaning materials and equipment including familiarization with the Project Assets materials, finishes and colour coding system (if applicable)
  - Manual material handling (where applicable)
  - Customer care
  - Personal hygiene
  - Appropriate dress and rules of conduct while on the Site or Project Facilities
  - Fire risks and fire precautions, and all other contingency plans
  - First aid training
  - Management of aggressive behaviour
  - Help Desk user instructions
  - A pledge of confidentiality
  - Infection control policies (including routine precautions, isolation, handwashing, blood and body fluid protocols, etc.)
  - Training and awareness of the high performance environmental building features at the Project Facilities and how these services can affect energy efficiency measures, pollution control, and occupant health.
- (b) Project Co shall ensure that all Project Co Parties involved in FM service delivery undertake the orientation course prior to their commencement for work. Every six Contract Months, Project Co shall deliver to HMQ a list of the employees engaged during the period and the date at which orientation was provided.
- (c) Project Co shall comply with Schedule H with respect to Background Checks for Project Co Parties. For more information on the CPIC process see Section 7 – Security.
- (d) Project Co shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every six Contract Months, Project Co will provide HMQ a report detailing where non-adherence has been identified.

#### **4.4.2 Training and Ongoing Knowledge and Skills Development**

- (a) Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to training and ongoing knowledge and skills development prior to commencement of FM services which shall include, but not be limited to:
- Maintain individual records to demonstrate professional competency and compliance with Applicable Laws, including all training and human resources records whose content will be agreed with HMQ for every employee of Project Co and every Subcontractor's employee.

- Ensure that Project Co Staff and Subcontractor's employees are properly trained for the relevant Service Category. More specifically:
  - Ensure Project Co Staff and its Subcontractors' employees are to be trained to an appropriate level commensurate with the responsibility of the post held and tasks required to be undertaken (including current C.P.R. skills, as required), with training records maintained and made available to HMQ for inspection upon written request.
- Provide first aid training to at least the service standards contained within the Occupational Health and Safety Regulation.
- Ensure that Project Co Staff and its Subcontractors' employees and managers are knowledgeable regarding the following issues:
  - Violence in the workplace
  - Fire and safety and all contingency plans
  - Occupational health and safety responsibilities, and due diligence
  - Workplace Hazardous Material Information System (WHMIS)
  - Infection control
  - Site orientation
  - Confidentiality
  - Human rights
  - Freedom of Information and Privacy Protection Act (FIPPA)
  - Personal Information Protection Act
- Ensure that all Project Co Parties are familiarized with the use of the Help Desk Services as part of their orientation training. The Help Desk Services shall also provide ad-hoc training as may be required to ensure MAG Occupants are aware of procedural updates. Project Co shall ensure that HMQ has updated, correct and timely information about the Help Desk which HMQ can use to train and orient HMQ and MAG Occupants about the Help Desk, as required.
- Ensure that all Project Co employees and its Subcontractor employees are engaged in the delivery of the FM service, and in addition to the orientation program, are at all times properly and adequately notified, trained and instructed in compliance with relevant Applicable Law, and that information is recorded within their personal training records (including by way of continuing professional development) with regard to:
  - The task that Project Co Staff and its Subcontractors' employees have to perform.
  - All the provisions of each Service Category relevant to the duties to be performed.
  - The job description and personal development plan.
  - All relevant provisions of this Service Category.
  - The manuals established by Project Co, where relevant to the FM services.
  - All relevant health and safety hazards, rules, policies and procedures established by Project Co concerning health and safety at work and all other mandatory and Applicable Laws.

- Fire precautions and fire procedures and other contingency plans established by Project Co.
- The need for Project Co Staff and its Subcontractors’ employees to show the highest standard of personal hygiene, courtesy and consideration at all times. Project Co Staff and its Subcontractors’ employees shall conduct themselves in a professional manner at all times.
- Project Co Staff and its Subcontractors’ employees are not to interfere with the building or occupant’s property.
- Use of all machines relevant to their work areas.
- Handling and usage of cleaning materials.
- Proper lifting and handling techniques.
- Provide HMQ with proof of licences, qualifications and registration that are legally required at the commencement of the Agreement and at any reasonable period thereafter, provided that reasonable notice is given in writing by HMQ to Project Co.

#### **4.4.3 Human Resources Matters**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to human resource matters prior to commencement of the FM services which shall include, but not be limited to:

- (a) Project Co shall ensure that all Project Co Parties, when on duty on the Project Facilities, are suitably identified and are properly and presentably dressed in appropriate uniforms and work wear (including protective clothing and footwear, where required), and maintain a high standard of personal hygiene commensurate with their allocated tasks and wear identification badges at all times while working in the Project Facilities. The uniforms will be provided by Project Co and will be distinctive and suitable for the services carried out under this Agreement.
- (b) Project Co shall ensure all Project Co Parties have a functional knowledge of the English language to carry out their respective responsibilities.
- (c) Project Co shall ensure that all Project Co staff comply with all Applicable Law, and regulations including, but not limited to, those relating to the Employment Standards Act, Workers’ Compensation Act and Regulations.

#### **4.5 Occupational Health and Safety**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to occupational health & safety/risk management prior to commencement of the FM services which shall include, but not be limited to:

- 4.5.1** Advise HMQ in writing, of any shortfalls it becomes aware of outside of its defined areas of responsibility.



- 4.5.2** Ensure compliance with Applicable Laws and health and safety regulations and policies.
- 4.5.3** Produce and update a comprehensive health and safety manual and ensure it is available to and used by all of Project Co Staff and its Subcontractors' employees.
- 4.5.4** Administer and manage Project Co's compliance with its health and safety obligations insofar as they relate to the provision of the FM services.
- 4.5.5** Advise HMQ of any breaches of Applicable Law.
- 4.5.6** Procure the services of a safety adviser qualified to at least the Canadian Registered Safety Professional (CRSP) level or equivalent, and coordinate the production, amendment and updating of the health and safety procedures of Project Co and the Subcontractors.
- 4.5.7** Ensure suitable first aid facilities are provided to all Project Co employees, it's Subcontractors' employees, MAG Occupants, Non-MAG Occupants and Courthouse Service Users maintained by Project Co and ensure the name of the on-duty Project Co first aider is clearly identified.
- 4.5.8** Maintain and keep up-to-date health and safety records and documentation and make these available for inspection by HMQ, or authorized Governmental Authorities, including, but not limited to:
  - (a)** Risk assessments in respect of all of the services (to be made available for inspection by HMQ's Representative or designate)
  - (b)** Service manuals
  - (c)** Procedure statements

## **4.6 Contingency Planning**

- 4.6.1** Project Co shall participate (only to the extent of the obligations imposed by these Overall Management Services and Service Categories) with HMQ in the development of seamless Contingency Plans for the safety and well-being of Project Co Staff, MAG Occupants, Non-MAG Occupants and Courthouse Service Users, and review same annually.
- 4.6.2** Project Co shall ensure that all the FM services will be delivered as required by the Service Standards and that there are plans in place to act very quickly in the event that Subcontractors are not available for any reason to deliver specified FM services, by having stand-by arrangements or other means to ensure seamless service delivery. Project Co shall prepare and have in place contingency plans at all times to ensure seamless service delivery. HMQ reserves the right to request access to the Contingency Plan to satisfy itself of its completeness and responsiveness.
- 4.6.3** Project Co shall have its own Contingency Plan to ensure it is able to deliver all services under this Agreement should there be Events or Failure Events in the Help Desk communications systems or other situations of communications failures. Project Co's Contingency Plan shall be prepared, discussed and submitted to HMQ on an annual basis.

## 4.7 Communications

4.7.1 Project Co shall develop, maintain and implement an appropriate Operations Communications Plan three months prior to Completion Date. The plan shall be consistent with Article 5 of the Agreement and shall include Project Co's way of dealing with the following issues:

- (a) General communications;
- (b) Community relations;
- (c) Media relations;
- (d) Government relations;
- (e) Crisis communications; and
- (f) Environmental issues.

4.7.2 Project Co shall produce and issue to HMQ for approval the following:

- (a) An annual Operations Communications Plan centered on the likely issues that may impact on the project operations over the next 12 months including:
  - Labour relations and subcontractor issues.
  - Contractual and courthouse issues.
  - Special interest information and stories.
  - Government based issues and private sector provision.
  - Environmental issues and a well understood system for communication with the occupant on them
  - Proposed media opportunities it may participate in (that require HMQ's approval).
  - During a crisis situation, Project Co and HMQ each understand that a ramping up of communications efforts will be required. Project Co will make available sufficient resources to effectively and proactively manage and perform its communications responsibilities during a crisis, including 24/7 availability.
- (b) In overseeing the communications program, HMQ will:
  - Review and approve Project Co's annual communication plan, as well as all media releases, and project information (print and electronic).
  - Retain overall responsibility for communications on policy and judicial related issues.
  - At its discretion, participate in and/or monitor all communication and consultation activities relevant to HMQ and undertaken by Project Co.
  - Periodically review Project Co's performance in providing communications support for HMQ.
  - Maintain responsibility for community relations and marketing activities (e.g. community events, and presentations to community groups). Project Co will provide if requested media materials and/or spokesperson(s).
- (c) Project Co and HMQ will jointly develop a plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the operating phase of the project. HMQ will maintain final approval on all aspects of communications that relate to it.

## **4.8 Quality Monitoring**

- 4.8.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Overall Management Services through the commissioning by a third party to conduct of a customer user satisfaction survey/questionnaire to be carried out annually. A Quality Satisfaction Failure will occur if the results of the user satisfaction survey/questionnaire generate a quality satisfaction score that corresponds to a Quality Satisfaction Failure (in definition). The intended target audience of the surveys will be MAG Occupants and Non-MAG Occupants.
- 4.8.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.
- 4.8.3** As part of its Quality Monitoring function, Project Co shall establish a quality assurance process to ensure that the benefits of design will be realized after completion. As the intent of HMQ to have the building LEED certified at the Silver level, Project Co shall ensure that its quality monitoring and control processes are consistent with that intent and in order to provide a higher level of assurance for the sustainability of the building. Project Co shall institute maintenance and life cycle processes that will enhance the building and promote the latest sustainability practices.
- 4.8.4** Project Co shall commit to the BOMA Go Green Plus Program and its implementation and will maintain the required certification for the DCC. Project Co will report back to HMQ every three years on this matter.
- 4.8.5** Project Co shall include in the Operational Protocol details outlining a higher level of quality assurance that is consistent with CSA's guidelines on Durability in Buildings (CSA S478-95 (R2001)) and with LEED EB (Existing Buildings).

## **4.9 Operational Issues Resolution Process**

HMQ intends to build a collaborative relationship with Project Co. Therefore emphasis should be placed on developing procedures to resolve contractual and service issues in a proactive and positive manner.

- 4.9.1** Project Co shall develop and carry-out an operational issues resolution process that is acceptable to HMQ and consistent with the Agreement.
- 4.9.2** The process shall allow for escalation of issues up to more senior executives within a specified timeframe. As a minimum the process shall cover the following aspects:
  - (a)** Project Co procedures for dealing with day-to-day complaints and their speedy resolution to the satisfaction of HMQ acting reasonably.
  - (b)** A process to escalate the issues (timing, severity and impact) and the organization method that will be put in place (local management role, regional management role and head office executives roles).
  - (c)** Process, including timing for resolution of issues.

#### 4.10 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
4.10.1 Performance to Standard - Availability	General Manager (or designate) available as per 4.1.5	High	Monthly	Random Audit
4.10.2 Policies and Procedures	Operational policies and procedures adhered to and current as per 4.1.7	High	Yearly	Report
4.10.3 Performance to Standard – Performance Monitoring	Performance Monitoring Program in place and operational as per 4.2	High	Per Request	Report
4.10.4 Performance to Standard - Reporting	Monthly Monitoring Report as per 4.3.1	High	Monthly	Report
4.10.5 Human Resources	Human Resource services available as per 4.4 and reporting on training as per 4.4.1 and orientation as per 4.4.2	Medium	Per Request	Report
4.10.6 Contingency Plans	Project Co has participated with HMQ in development of Contingency Plans as per 4.6	Medium	Yearly	Report
4.10.7 Communications	Operations Communications Plans in place and operational as per 4.7	Medium	Per Request	Review Plan
4.10.9 Quality Assurance	Quality Assurance Program as per 4.8.2	Low	Yearly	Annual Report
4.10.10	Operational Protocol as per 4.11	High	Once (30 days before Completion Date) and annually after	Report

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the

frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session as defined in the Payment Mechanism. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

#### **4.11 Operational Protocol**

- 4.11.1** During the Design and Construction Phase Project Co shall keep track of any potential change to any Service Standards as the result of the design and construction of the Project Facilities.
- 4.11.2** Before Completion Date, Project Co will prepare, for comments and approval by HMQ, an Operational Protocol including the Service Standards. The Operational Protocol will serve as a working document to be discussed and updated after the mobilization and the Initial Operational Phase. The Operational Protocol shall describe the way Project Co intends to integrate the Service Priorities related to Event, Failure Event or Request for Service Priorities, Response and Rectification Times in Table 1, for example if courtrooms are to be open and available at 9:00 AM, what is the process that Project Co will follow to ensure that all Events or Failure Events have been rectified before the opening time of 9:00 AM. As part of the Operational Protocol, Project Co shall describe the situations that are deemed to be Emergency, Urgent and Routine based on the descriptions provided in Table 1. Additionally, as part of the Operational Protocol, Project Co shall indicate how its General Manager and Project Co Staff will deal directly with HMQ, MAG Occupants, Non-MAG Occupants and Courthouse Users and the types of interfaces they will have with the Help Desk operations. The Operational Protocol shall always reflect the agreed upon specifications and Service Standards and therefore will not supersede the Service Standards.
- 4.11.3** The establishment of the Project Management Oversight Committee in accordance with Article 29 of the Agreement does not replace or remove the need to establishing a working committee to oversee the on-going operations of the Project Facilities.
- 4.11.4** Following the Initial Operational Phase, a review of the Operational Protocol shall take place in order to calibrate the Service Standards. Project Co will propose changes to the Operational Protocol for discussion and final approval by HMQ.
- 4.11.5** On an annual basis, Project Co will report back to HMQ on the Operational Protocol, suggest improvements to be considered by HMQ to take into account any changes to the Project Facilities and any re-commissioning that took place.

## 4.12 Summary Reporting Requirements

For convenience, Project Co reporting requirements as identified in these Service Categories are summarized in this section, by frequency of reporting (i.e. monthly, quarterly, annually and ad-hoc). Reports included in any one category (monthly, quarterly, etc.) may be combined provided that such combined report will be organized such that the content identified in the requirements is easily locatable. All the reports listed in this section will be subject to the Review Procedure.

### 4.12.1 Report Submitted Monthly

Report Name	Reference	Description
Monthly Monitoring Report	4.3	<p>Project Co shall prepare a Monthly Monitoring Report and deliver it to HMQ within 5 Business Days after the end of each Contract Month. The Monthly Monitoring Report shall include, but not be limited to, the following information regarding the period just ended:</p> <ul style="list-style-type: none"> <li>• All statistical data required for any provincial or federal reports/returns, including per period worked hours and billings by service.</li> <li>• A summary by service of all Events reported to the Help Desk, including the applicable Service Response Time and Rectification Time, and the actual time of Service Response and Rectification.</li> <li>• A summary of all Failure Events.</li> <li>• A summary of all Unavailability Events</li> <li>• Identification of the Space affected.</li> <li>• The relevant volume</li> <li>• The number of Service Failure Points to be awarded in respect of Failure Events on a daily basis.</li> </ul>
Monthly Utility Report	9.5.3	Utilities consumed, suppliers and any disruptions as per 9.3.5, 9.3.6 and 9.3.7

Monthly Maintenance Report	10.3.2 J	<p>Report in a format agreed with HMQ which includes:</p> <p>All Demand and Scheduled Maintenance.</p> <p>A schedule of all Service Failures</p> <p>Reporting on trends related to equipment maintenance or failures</p> <p>Details of training of personnel, changes of personnel and changes to established working practices</p> <p>Such reports as required by Applicable Law.</p>
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For Cleaning Services (Interior and Exterior) and Plant Services, Project Co will report by grouping of services rather than by individual activity. The grouping is referred to as FM Element in the respective tables in Sections 5, 6 and 10.

#### 4.12.2 Reports Submitted Annually

<b>Report Name</b>	<b>Reference</b>	<b>Description</b>
Annual Quality Assurance Report	4.10.9, 5.5.9, 6.5.9, 7.5.6, 8.5.15, 9.5.7, 10.5.11, 11.5.9, 12.5.8, 15.5.7, 13.5.4, 16.5.9, 17.5.12 and 18.5.9	Overall annual Quality Assurance Program as per 4.8.2, 5.4.2, 6.4.2, 7.4.2, 8.4.2, 9.4.2, 10.4.2, 11.4.2, 12.4.2, 13.4.2, 15.4.2, 16.4.2, 17.4.2 and 18.4.2
Operational Protocol	4.10.10	On an annual basis, Project Co will report back on the Operational Protocol, suggest improvements to be considered by HMQ to take into account any changes to the building and any re-commissioning that took place.
Annual Security Report	8.5.14 (d)	Prepare an annual written report for HMQ providing the following information on the building: <ul style="list-style-type: none"> <li>• Confirmation that the DCC building complies with the requirements of municipal, provincial, and federal bylaws and regulations, and all other Applicable Law relating to fire safety.</li> <li>• Confirmation that procedures in place comply with the requirements of municipal, provincial, and federal bylaws and regulations, and all other Applicable Law relating to fire safety.</li> <li>• Confirmation of the existence of building Emergency Plans</li> </ul>
Annual Utility Report	Schedule M – Energy Matters	The Annual Utility Report shall be comprehensive and in accordance with 9.3.4 (d) and in compliance with Schedule M- Energy Matters
Plant Services-Rolling 5 Year Maintenance Plan	10.3.2.J	Rolling 5 Year Maintenance Plan for the Project Facilities, including life-cycle maintenance, planned improvement and replacement programs, and a report for the facilities, on every anniversary of the Agreement, from the Completion Date, in a format to be agreed between the parties.



Operational Services- Policies & Procedures		Operational policies and procedures are current and adhered to as per 4.10.2, 10.3, 11.3.10, 12.3.5, 15.3.3, 16.3.2, and 17.3.3.
Annual Life Cycle Renewal Report Plan	14.5.1	Description of all the activities that took place during the year in relations to plans and any deviation from plan and identification of any shortcomings or deficiencies as well as description of all planned life cycle renewal activities for the year.

#### 4.12.3 Reports Submitted on an Ad-Hoc Basis

<b>Report Name</b>	<b>Reference</b>	<b>Frequency</b>	<b>Description</b>
Operational Protocol	4.11.2	Once (30 days before Completion Date) and annually afterward	Operational Protocol as per 4.11
Utilities Management Services – BOMA Go Green Comprehensive	9.5.8 and 9.5.9	Every three years	Energy Use – Phase 1 Audit as per BOMA Go Green Plus Program and Water Use Phase 1 Audit as per BOMA Go Green Plus Program
Life Cycle Renewal Services	14.5.7	Every five years	Facility Condition Assessment report as per 14.4.3

## **5 CLEANING SERVICES - BUILDING EXTERIOR**

Project Co is required to achieve the specified general levels of environmental cleanliness on and around the exterior of the Project Facilities.

### **5.1 Requirements**

The Cleaning Services include:

- (a)** Cleaning Services on a scheduled, proactive and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall achieve the following objectives:
  - Provide effective and efficient management of the Building, Fixtures and Environment.
  - Meet the Service Standards of cleanliness as defined in this Service Category.
  - Ensure collaborative working relationships with contractors hired by HMQ and with MAG Occupants.
  - Acquire and/or requisition and dispense of all Cleaning Services consumables.
- (b)** Service Standards are achieved through provision of a flexible Cleaning Services team with a culture that incorporates continuous development and innovation relating to changes in HMQ's needs, together with equipment, effective management systems, clear performance targets and appropriate levels of monitoring.
- (c)** Reasonable and competent supervision of the work at all times and of all Project Co Staff and Subcontractor personnel performing services under this Agreement.
- (d)** Project Co shall prepare a periodic monitoring report in accordance with relevant aspects of this task.
- (e)** Project Co shall ensure that all requisitions for Ad Hoc Cleaning Services may be completed electronically via the Help Desk.

### **5.2 Scope of Services**

Cleaning Services consist of the following elements:

- (a)** Cleaning Services; and
- (b)** Quality Monitoring.

### **5.3 Service Requirements**

- 5.3.1** Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to Cleaning Services prior to commencement of service which shall include, but not be limited to:

- (a) Cleaning of the Building, Fixtures and Environment to the standards specified in this Service Category at all times.
- (b) Project Co shall develop and implement a Material Selection Policy consistent with the BOMA Go Green Plus Program.

**5.3.2** Provision of routine Cleaning Services on a Monday to Friday, 8:00 am to 5:00 pm, basis to meet the requirements of this Service Category in all areas of the building, including:

- (a) The Building, Fixtures and Environment according to Cleaning Quality Standards described in 5.3.3
- (b) The Space requirements according to 5.3.4 and with due regard to examples in 5.3.5 and 5.3.6.

**5.3.3** Building, Fixtures and Environment Cleaning Quality Standards

**(a) Building**

FM Element	Requirement
Building Site	<ul style="list-style-type: none"> <li>• Building external area is free from rubbish, vandalism, chewing gum, cigarette butts, vermin and/or pests.</li> <li>• Garbage bins shall be at less than 75% capacity and free from malodour.</li> <li>• Refer to 7.3.11 of Grounds Maintenance and Landscaping Services section for maintenance of building grounds.</li> </ul>
External Features (Fire Exits, Chimney Stacks and Stairwells)	<ul style="list-style-type: none"> <li>• Landings, ramps, stairwells, fire exits, steps, entrances, porches, patios, podiums, penthouses, decks, safety barriers (bollards), walkways, balconies, eaves, external light fittings are free of dust, grit, dirt, chewing gum, leaves, cobwebs, rubbish, graffiti, cigarette butts, moss growth, bird excreta and vandalism.</li> <li>• Weatherproof where appropriate.</li> <li>• Chimney stacks/flues are free from blockages, excess soot, debris and are structurally sound and secure.</li> <li>• Claddings, copings and parapets are structurally sound and secure.</li> <li>• Exterior handrails are free of residue, grease, dirt, film and stains.</li> </ul>
Roof System	<ul style="list-style-type: none"> <li>• Roof inspections to be conducted on roof on a planned basis by a qualified CRCA* member.</li> <li>• Gutters and down-pipes are free of debris and are to be cleaned or painted if necessary.</li> <li>• Roof drains are free of debris and dirt to permit easy</li> </ul>

FM Element	Requirement
	<p>flow of water.</p> <ul style="list-style-type: none"> <li>• Flashings are free of rust. If metal work is corroded, damaged or broken joints, work is to be repaired or maintained as required.</li> <li>• Roof surfaces are free of debris.</li> <li>• Parapet walls are maintained as required. Brick or block walls are repainted if required. Walls are re-capped and waterproofed if required. Caulking is renewed if required.</li> <li>• Appurtenances (such as metal and glazing of the skylights and the flashings around powered units) are examined and are free of damage, corrosion and broken joints. Repair as required.</li> <li>• Walks are free of accumulated rubbish to ensure proper drainage.</li> </ul> <p>*(Canadian Roofing Contractor's Association (CRCA))</p>
Walls (Metal Panel, Precast Concrete, and Masonry)	<ul style="list-style-type: none"> <li>• All external walls are free of dust, grit, lint, soil, film, graffiti, spalling, efflorescence and cobwebs.</li> <li>• All external walls are free from hazardous materials, structural cracks and/or deflection, and from undue damage and are of reasonable appearance for location.</li> <li>• All weep holes are to be free of dirt, film, residue and soil.</li> <li>• For cleaning of masonry surfaces, refer to the National Association of Brick Distributors, 'Building for the Future, A Guide to Masonry Construction'.</li> <li>• Refer to <b>ASTM D4258</b>, Standard Practice for Surface Cleaning Concrete for Coating, for cleaning practices of concrete surfaces.</li> <li>• All concrete and precast concrete walls are free of stains, dirt, grit, graffiti, cobwebs, and film.</li> <li>• For cleaning of concrete and precast concrete surfaces, refer to The Architectural Precast Association.</li> <li>• All metal panels are free of oil, dirt, grease, smudge marks, and graffiti.</li> <li>• For metal panels, refer to manufacturer's instructions for appropriate cleaning practices.</li> </ul>
Windows, Curtain Wall, Entrance, and Skylight Systems	<ul style="list-style-type: none"> <li>• External surfaces of glass on exterior windows are to be clear of all streaks, dirt, residue, chewing gum, spots and marks, including fingerprints and smudges.</li> <li>• Window frames, tracks and ledges are clear and free of dust, grit, marks and spots.</li> </ul>

FM Element	Requirement
	<ul style="list-style-type: none"> <li>• For cleaning of glass surfaces, refer to the Glass Association of North America’s Glass Informational Bulletin (GANA 01-0300); ‘Proper Procedures for Cleaning Architectural Glass Products’.</li> </ul>
<p>Exterior Doors (Steel Doors and Frames, Aluminium Doors, Overhead and Coiling Doors and Automatic Entrances)</p>	<ul style="list-style-type: none"> <li>• External doors and doorframes are free of dust, dirt and residue, stains, corrosion, grit, lint, chewing gum, soil, film, fingerprints and cobwebs.</li> <li>• Air vents, grilles and other ventilation outlets are kept unblocked and are free of dust, grit, soil, film, cobwebs, scuffs and any other marks.</li> <li>• All door hardware items are free of stains on hinges, locks, catches and handles, and without binding, making noise, rubbing or catching in any way.</li> <li>• Polished surfaces are of a uniform lustre.</li> <li>• Door tracks and doorjambes are free of grit and other debris.</li> <li>• External glass surfaces are clear of all streaks, chewing gum, spots and marks, including fingerprints and smudges.</li> <li>• For cleaning of glass surfaces, refer to the Glass Association of North America’s Glass Informational Bulletin (GANA 01-0300); ‘Proper Procedures for Cleaning Architectural Glass Products’.</li> <li>• All steel and aluminium doors are free of oil, grease, graffiti, dirt, residue, and smudge marks.</li> <li>• For all exterior doors, refer to manufacturer’s instructions for appropriate cleaning practices.</li> <li>• For all anodized aluminium surfaces, refer to The Anodized Aluminium Council.</li> </ul>
<p>Ducts, grills and vents</p>	<ul style="list-style-type: none"> <li>• All ventilation outlets are kept unblocked and free of dust, grit, chewing gum, soil, film, cobwebs, scuffs and any other marks.</li> <li>• All ventilation outlets are kept clear and uncluttered following cleaning.</li> </ul>

**(b) Fixtures**

<b>FM Element</b>	<b>Requirement</b>
Electrical and Lighting Fixtures	<ul style="list-style-type: none"><li>• All electrical and lighting fixtures attached to the exterior of the building surface are free of grease, dirt, dust, deposits, marks, stains and cobwebs</li><li>• Light fixtures are securely fastened, well painted or finished and no tubes or bulbs are burnt out.</li><li>• Motor vents, etc., are clean and free of duct and lint.</li></ul>

**(c) Environment**

<b>FM Element</b>	<b>Requirement</b>
Overall appearance	<ul style="list-style-type: none"><li>• The area appears tidy and uncluttered.</li><li>• Fire access and exit doors are left clear and unhindered.</li></ul>
Odour control	<ul style="list-style-type: none"><li>• There is no unpleasant or distasteful odour emanating from the Project Facilities.</li></ul>

- 5.3.4** Cleaning to the standards as identified in this Service Category with due note taken to the Canadian Occupational Health and Safety Regulations, (COHSR), Part 2, of all FM Components (including Building, Fixtures and Environment) as described in detail in 5.3.3, except where specifically excluded between HMQ and Project Co.
- 5.3.5** Collecting lost and found articles and forwarding them to Security Services.
- 5.3.6** Provision, maintenance, cleaning, storage and replacement of all cleaning equipment.
- 5.3.7** Procurement, safe storage and use of all cleaning materials required for the provision of Cleaning Services and for all costs incurred in their procurement, safe storage and use.
- 5.3.8** Provision of a listing of cleaning products used in the cleaning operation, and that:
- (a)** All materials thoroughly clean the facilities, not be detrimental to the life of systems and building FM Components.
- (b)** A copy of material safety data sheets (MSDS) of supplies used is kept on-site in accordance to WHMIS and WCB regulations
- 5.3.9** Provision of Reactive Cleaning Services on a Monday to Friday, 8:00 am to 5:00 pm basis to address any Emergency, urgent and/or routine cleaning requests as well as for WASH court operations that generally last full day on all weekends and statutory holidays, running from 9:30 am to 3:00 pm. The court clerk arrives at 8:15 am. Project Co shall respond to such Service Requests within the requisite Service Response and Rectification Times.

**5.3.10** Provision of a Proactive Cleaning Service by identifying and responding to ad-hoc, emergency, or urgent requirements at all times.

**5.3.11** Implementation of and adherence to a full audit trail of all activities involved in operating and managing the service at all times. The audit trail shall be agreed in advance with HMQ management and must be available for HMQ inspection as necessary.

**5.4 Quality Monitoring**

**5.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Cleaning Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed between Project Co and HMQ.

**5.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

**5.5 Service Standards**

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
5.5.1 Performance to Standard – Building, Fixtures and Environment	Building, Fixtures and Environment cleaned as per 5.3.3	High	Monthly	Examination of supervisor audits of work
5.5.2 Performance according to Laws and/or Regulations	All areas cleaned in accordance with 5.3.4	Medium	Monthly	Random audit
5.5.3 Handling of cleaning materials	All cleaning materials handled as per 5.3.8	Medium	Monthly	Random audit
5.5.4 Performance to Standard - Reactive	Reactive cleaning services provided as per 5.3.9	Medium	Monthly	Cleaning dispatch system records
5.5.5 Performance to Standard - Proactive	Proactive cleaning service provided as per 5.3.10	Medium	Monthly	Examination of Project Co Quality Assurance Program
5.5.6 Audit Trail	Audit trail provided as per 5.3.11	Low	Yearly	Random audit



5.5.8 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 5.4.1	Medium	Yearly	Annual occupant satisfaction surveys
5.5.9 Quality Assurance	Quality Assurance Program as per 5.4.2	Low	Yearly	Annual Report
5.5.10 Reporting	All reporting by Project Co to be accurate and reliable	Low	Quarterly	Random Audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **6 CLEANING SERVICES – BUILDING INTERIOR**

Project Co is required to achieve the specified general levels of environmental cleanliness within the interior of the Project Facilities while conducting specialized cleaning in the following Elements:

- (a)** “In Custody” Holding Facilities
- (b)** Courtrooms and Chambers
- (c)** General Office and Public Areas

### **6.1 Requirements**

The Cleaning Services include:

- (a)** Cleaning Services on a scheduled, proactive and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall achieve the following objectives:
  - Provide effective and efficient management of the environment.
  - Meet the Service Standards of cleanliness as defined in this Service Category.
  - Ensure collaborative working relationships with other contractors and with HMQ employees.
  - Acquire and/or requisition and dispense of all Cleaning Services consumables.
- (b)** Service Standards are achieved through provision of a flexible Cleaning Services team with a culture that incorporates continuous development and innovation relating to changes in HMQ’s needs, together with equipment, effective management systems, clear performance targets and appropriate levels of monitoring.
- (c)** Reasonable and competent supervision of the work at all times and of all Project Co Staff and Subcontractor personnel performing services under this Agreement.
- (d)** Project Co shall prepare a periodic monitoring report in accordance with relevant aspects of this task.
- (e)** Project Co shall ensure that all requisitions for Ad Hoc Cleaning Services may be completed electronically via the Help Desk.

## 6.2 Scope of Services

6.2.1 Cleaning Services consist of the following elements:

- (a) Cleaning Services; and
- (b) Quality Monitoring.

## 6.3 Service Requirements

6.3.1 Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to Cleaning Services prior to commencement of service which shall include, but not be limited to:

- (a) Cleaning of the Building, Fixtures and Environment to the standards specified in this Service Category at all times.
- (b) Project Co shall develop and implement a Material Selection Policy consistent with the BOMA Go Green Plus Program.
- (c) Cleaning of specific building areas with due regard to the following Elements categorization:
  - “In Custody” Holding Facilities;
  - Courtrooms and Support Areas, and
  - General Office and Public Areas.

6.3.2 Provision of routine Cleaning Services on a Monday to Friday, 8:00 am to 5:00 pm, basis to meet the requirements of this Service Category in all areas of the building, including:

- (a) The Building, Fixtures and Environment according to Cleaning Quality Standards described in 6.3.3
- (b) The Elements requirements according to 6.3.4 and with due regard to examples in 6.3.5 and 6.3.6.
- (c) In addition to the above, Project Co shall provide Cleaning Service to WASH court operations. WASH courts that generally last full day on all weekends and statutory holidays, running from 9:30 am to 3:00 pm. The court clerk arrives at 8:15 am.

### 6.3.3 Building, Fixtures and Environment Cleaning Quality Standards

#### (a) Building

FM Element	Requirement
Wall Finishes (Vinyl, Wood Panels, Gypsum Board, and Tile) Partitions	<ul style="list-style-type: none"><li>• Internal walls and partitions are free of residue, dirt, dust, grit, lint, soil, film, graffiti, smudge marks, fingerprints, grease and cobwebs.</li></ul>

FM Element	Requirement
(Vinyl, Gypsum Board and Wire Mesh)	<ul style="list-style-type: none"> <li>• All internal walls and partitions are free from asbestos and other hazardous materials, structural cracks and/or deflection, damp and vermin and from undue damage and are of reasonable appearance for location.</li> <li>• Walls are free of marks caused by furniture, equipment or users of the facility.</li> <li>• Rails and baseboards are clean to the naked eye, free of dust, cobwebs, lint, debris, finger marks, smudges, cleaning streaks, residue, spots or splashes.</li> <li>• There are no signs of improper mopping or deep cleaning techniques.</li> <li>• All vinyl wall coverings are free of dust, dirt, grit, cobwebs, residue, graffiti, fingerprints, smudge marks or film.</li> <li>• For cleaning of vinyl surfaces, refer to The Master Painters Institute’s Architectural Painting Specification Manual, ‘Cleaning of Vinyl Wall Coverings’ and/or the manufacturer’s instruction on appropriate cleaning practices.</li> <li>• All wood paneling is free of dust, stains, dirt, grit, cobwebs, residue, graffiti, fingerprints, smudge marks or film.</li> <li>• For cleaning of wood surfaces, refer to the Architectural Woodwork Manufacturers Association of Canada (AWMAC).</li> <li>• All gypsum walls and partitions are free of dirt, residue, fingerprints, dust, smudge marks, cobwebs, graffiti, and stains.</li> <li>• For cleaning of gypsum surfaces, refer to manufacturer’s instructions for appropriate cleaning practices.</li> <li>• All wire mesh partitions are free of dirt, residue, corrosion, film, grease, and vandalism.</li> <li>• For wire mesh partitions, refer to manufacturer’s instructions for appropriate cleaning practices.</li> <li>• All tile wall finishes are free of dust, film, grease, fingerprints, dirt, residue, and graffiti.</li> <li>• For all tile wall surfaces, refer to Terrazzo, Tile and Marble Association of Canada’s (TTMAC) 2000 Maintenance Guide for appropriate cleaning practices.</li> <li>• Refer to <b>ASTM D4488</b>: Standard Guide for</li> </ul>

FM Element	Requirement
	<p>Testing Cleaning Performance of Products Intended for Use on Resilient Flooring and Washable Walls.</p>
<p>Windows &amp; Coverings</p>	<ul style="list-style-type: none"> <li>• Internal surfaces of glass on interior windows and storefronts are clear of all residue, dirt, streaks, chewing gum, spots and marks, including fingerprints and smudges.</li> <li>• Window frames, tracks and ledges are clear and free of dirt, residue, dust, grit, marks and spots.</li> <li>• For cleaning of glass surfaces, refer to the Glass Association of North America's, GANA 01-0300, Glass Informational Bulletin; 'Proper Procedures for Cleaning Architectural Glass Products'.</li> <li>• Blinds, tapes, cords and window shades, both vertical and horizontal, are clean to the naked eye, free of dust, cobwebs, lint, debris, finger marks, smudges, cleaning streaks, stains, residue, or spots.</li> <li>• Window coverings reveal no tears or broken strings, draw strings or louvers, are in a good state of repair and operable.</li> </ul>
<p>Interior Doors (Hollow Metal, Solid Wood Core - Plastic Laminate and Hardwood Veneer Facings)</p>	<ul style="list-style-type: none"> <li>• Internal doors and doorframes are free of dirt, residue, dust, corrosion, grit, lint, chewing gum, soil, film, stains, grease, smudge marks, fingerprints and cobwebs.</li> <li>• Doors and doorframes are free of marks caused by furniture, equipment or staff.</li> <li>• All solid wood core doors and facings are free of dirt, residue, dust, film, fingerprints, stains, smudge marks and graffiti.</li> <li>• For solid wood core doors and facings, refer to the Architectural Woodwork Manufacturers Association of Canada (AWMAC) and/or manufacturer's instructions for appropriate cleaning practices.</li> <li>• All metal doors are free of dirt, residue, dust, film, fingerprints, stains, smudge marks, grease and graffiti.</li> <li>• For metal doors, refer to manufacturer's instructions for appropriate cleaning practices.</li> <li>• Air vents, grilles and other ventilation outlets are kept unblocked and free of dirt, dust, grit, soil, film, cobwebs, scuffs and any other marks.</li> <li>• Door tracks and doorjambes are free of dirt, residue,</li> </ul>

FM Element	Requirement
	<p>grit and other debris.</p> <ul style="list-style-type: none"> <li>• All door hardware items are free of stains on hinges, locks, catches and handles, and without binding, making noise, rubbing or catching in any way.</li> <li>• For door hardware, refer to manufacturer's instructions for cleaning practices.</li> <li>• Polished surfaces are of a uniform lustre.</li> <li>• Internal glass surfaces are clear of all dirt, residue, streaks, chewing gum, spots and marks, including fingerprints and smudges.</li> <li>• Refer to Glass Association of North America's, GANA 01-0300, Glass Informational Bulletin; proper procedures for cleaning architectural glass products.</li> </ul>
<p>Floor Finishes – Hard floors (Ceramic Tile, Terrazzo, Resilient and Epoxy Flooring)</p>	<ul style="list-style-type: none"> <li>• The floor is free of dirt, dust, grit, litter, chewing gum, marks and spots, water, other liquids or pests.</li> <li>• The floor is free from tears, scoring, cracks or any other damage that is unsightly and/or could cause a health and safety hazard.</li> <li>• The floor is free of polish or other build-up at the edges and corners or in traffic lanes.</li> <li>• The floor is free of spots, scuffs or scratches on traffic lanes, around furniture and at pivot points.</li> <li>• All floor finishes are fully adhered to floor so as not to create a potential safety hazard.</li> <li>• Inaccessible areas (edges, corners and around furniture) are free of dust, grit, lint and spots.</li> <li>• Polished or buffed floors are of a uniform luster</li> <li>• Appropriate signage and precautions are taken regarding pedestrian safety on newly cleaned or wet floors.</li> <li>• For all epoxy floors and floor sealers, refer to manufacturer's instructions for appropriate cleaning practices.</li> <li>• All terrazzo and tile floors are free of acidic spills, grit, dirt, or other residue.</li> <li>• For all terrazzo and tile floor surfaces, refer to the Terrazzo, Tile and Marble Association of Canada's (TTMAC) 2000 Maintenance Guide for appropriate cleaning practices.</li> </ul>

FM Element	Requirement
	<ul style="list-style-type: none"> <li>• Refer to <b>ASTM D4488</b>: Standard Guide for Testing Cleaning Performance of Products Intended for Use on Resilient Flooring and Washable Walls.</li> </ul>
Floor Finishes – Soft floors (Carpet)	<ul style="list-style-type: none"> <li>• The floor is free of dirt, dust, grit, litter, stains, chewing gum, marks, spots, water or other liquids.</li> <li>• The floor is free of stains, dirt, dust on traffic lanes, around furniture and at pivot points.</li> <li>• All floor finishes are fully adhered to floor so as not to create a potential safety hazard.</li> <li>• Inaccessible areas (edges, corners and around furniture) are free of dust, grit, lint and spots.</li> <li>• Carpets and entrance matting are of an even appearance without flattened pile. After deep cleaning, there is no shrinkage, colour loss or embrittlement of fibres.</li> <li>• Dust control mats are free from ingrained dust, dirt and stains, and edges and reverse side are free from dust and dirt.</li> <li>• For carpet surfaces, refer to the Canadian Carpet Institute and the Carpet and Rug Institute’s ‘Carpet Maintenance Guidelines for Commercial Applications’.</li> </ul>
Access Flooring	<ul style="list-style-type: none"> <li>• All access flooring is to be kept unblocked, free of dust, grit and dirt.</li> </ul>
Ceiling Finishes (Acoustic Tile, Gypsum Board, Metal Linear)	<ul style="list-style-type: none"> <li>• All ceilings are free of dirt, residue, dust, grit, lint, soil, film, graffiti and cobwebs.</li> <li>• All ceilings are free from asbestos and other hazardous materials, structural cracks and/or deflection, damp and vermin and from undue damage and are of reasonable appearance for location.</li> <li>• Ceilings are free of marks caused by furniture, equipment or users of the facility.</li> <li>• The ceiling and support frames are clean to the naked eye with no cracks peeling paint or holes needing repair.</li> <li>• All acoustic tile and gypsum board ceilings are free of dust, dirt, grit, stains, cobwebs, and graffiti.</li> <li>• For acoustic tile and gypsum board ceilings, refer to manufacturer’s instructions for appropriate cleaning practices.</li> <li>• All metal linear ceilings are free of grease, oil,</li> </ul>

FM Element	Requirement
	smudge marks, graffiti, dust, and dirt. <ul style="list-style-type: none"> <li>• For metal linear ceiling surfaces, refer to manufacturer’s instructions for appropriate cleaning practices.</li> </ul>
Ducts, grills and vents	<ul style="list-style-type: none"> <li>• All ventilation outlets are kept unblocked and free of dust, grit, chewing gum, soil, film, cobwebs, scuffs and any other marks.</li> <li>• All ventilation outlets are kept clear and uncluttered following cleaning.</li> </ul>
Parking Garage	<ul style="list-style-type: none"> <li>• Walls and surface are free of dirt, dust, water and other liquid.</li> <li>• The floor is free from tears, scoring, cracks, spots, scratches or any other damage that could cause a health and safety hazard.</li> <li>• The floor is free of polish or other build-ups.</li> </ul>



**(b) Fixtures**

<b>FM Element</b>	<b>Requirement</b>
Electrical fixtures, lifting devices and appliances	<ul style="list-style-type: none"><li>• Electrical fixtures, elevators, escalators and appliances are free of grease, dirt, dust, deposits, marks, stains and cobwebs.</li><li>• Electrical fixtures and appliances are kept free from signs of use or non-use.</li><li>• Light fixtures are securely fastened, well painted or finished and no tubes or bulbs are burnt out. Hygiene standards are satisfied where the fixture or appliance is used in food preparation.</li><li>• Motor vents, etc., are clean and free of dust and lint.</li><li>• Insect killing devices are free of dead insects, and are clean and functional.</li><li>• Light switches are free of fingerprints, scuffs and any other marks.</li><li>• Light fittings are free of dust, grit, lint and cobwebs</li></ul>
Furnishings and fixtures FF&E	<ul style="list-style-type: none"><li>• All furnishings are free of damage due to misuse or general wear and tear.</li><li>• All hard surface furniture is free of spots, soil, film, grease, dust, smudge marks, fingerprints and spillage.</li><li>• For wood surfaces, refer to the Architectural Woodwork Manufacturers Association of Canada (AWMAC) for appropriate cleaning practices.</li><li>• Soft furnishings are free from stains, soil, film and dust.</li><li>• Furniture legs, wheels and castors are free from mop strings, soil, film, dust and cobwebs.</li><li>• Inaccessible areas (edges, corners, folds and crevices) are free of dust, grit, lint and spots.</li><li>• All high surfaces are free from dust and cobwebs.</li><li>• Curtains, blinds and drapes are free from stains, dust, cobwebs, lint and signs of use or non-use. Cords shall be clean and knot free.</li><li>• Equipment is free of tapes/plastic, etc., which may compromise cleaning.</li><li>• Furniture has no unpleasant or distasteful odour.</li></ul>

	<ul style="list-style-type: none"> <li>• Shelves, bench tops, cupboards and wardrobes/lockers are clean inside and out, and free of dust and litter.</li> <li>• Internal plants are free of dust and litter.</li> <li>• Waste/rubbish bins or containers are clean inside and out, free of stains and mechanically intact.</li> <li>• Waste is removed in accordance with Service Category 12, Environmental Services</li> <li>• Fire extinguishers and fire alarms are free of dust, grit, dirt and cobwebs, and mechanically intact.</li> <li>• All decorative plants are free of dust and debris.</li> </ul>
Kitchen fixtures and appliances	<ul style="list-style-type: none"> <li>• Fixtures, surfaces and appliances are free of grease, dirt, dust, deposits, marks, stains and cobwebs.</li> <li>• Electrical and cooking fixtures and appliances are kept free from signs of use or non-use.</li> <li>• Cooker hoods (interior and exterior) and filters are free of grease and dirt on inner and outer surfaces.</li> <li>• When cleaning food preparation areas, fixtures or appliances, the requirements of the Hazard Analysis Critical Control Points (HACCP) Standards must be satisfied.</li> <li>• Motor vents, etc., are clean and free of dust and lint.</li> <li>• Refrigerators/freezers are clean and free of ice build-up.</li> <li>• Waste is removed in accordance with the Service Category 12, Environmental Services</li> </ul>
Toilets and bathroom fixtures	<ul style="list-style-type: none"> <li>• Porcelain, cubicle rails and plastic surfaces are free from smudges, body fluids, soap build-up, mineral deposits, hair inside and outside.</li> <li>• Metal surfaces, shower screens and mirrors are free from streaks, soil, smudges, soap build-up and oxide deposits.</li> <li>• Wall tiles and wall fixtures (including soap dispensers and towel holders) are free of dust, grit, smudges/streaks, mould, soap build-up and mineral deposits.</li> <li>• Shower curtains and bath mats are free from stains, smudges, smears, odours, mould and body fluids.</li> <li>• Plumbing fixtures are free of smudges, dust, soap build-up and mineral deposits.</li> </ul>

	<ul style="list-style-type: none"> <li>• Bathroom fixtures are free from unpleasant odours.</li> <li>• Polished surfaces are of a uniform lustre.</li> <li>• Sanitary disposal units are clean and functional.</li> <li>• Consumable items are in sufficient supply.</li> <li>• Waste is removed in accordance with Service Category 12, Environmental Services</li> </ul>
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**(c) Environment**

<b>FM Element</b>	<b>Requirement</b>
Overall appearance	<ul style="list-style-type: none"> <li>• The area appears tidy and uncluttered.</li> <li>• Floor space is clear, only occupied by furniture and fittings designed to sit on the floor.</li> <li>• Furniture is maintained in a manner, which allows for cleaning.</li> <li>• Fire access and exit doors are left clear and unhindered.</li> </ul>
Odour control	<ul style="list-style-type: none"> <li>• The area smells fresh.</li> <li>• There is no unpleasant or distasteful odour.</li> <li>• Room deodorizers are clean and functional.</li> </ul>

**6.3.4 “In Custody” Holding Facilities, including Washroom Facilities and Support Areas**

**(a)** In addition to the quality standards outlined in 6.3.3, facilities in these Elements must receive special Cleaning Services according to the standards outlined below:

- Nightly services:
  - Holding cells to be cleaned and washed nightly using an acceptable cleaning products.
  - Plexiglas in holding cells to be cleaned and washed nightly using an acceptable cleaning products as required by Section 6.3.11.
  - Basins, toilet bowls, and urinals will be washed and disinfected.
  - Both sides of all toilet seats will be washed and disinfected.
  - Paper towel and sanitary disposal receptacles will be emptied and cleaned.
  - Toilet tissue holders, soap dispensers, towel dispensers and sanitary napkin or tampon dispensers will be replenished.
- Periodic services:
  - Holding cells to be power washed two times per month, including walls, floors and cell bar fronts.

**(b)** The expectations are that In Custody Holding Facilities will be cleaned while no In Custody occupants are present. In the event that cleaning is required while In Custody

occupants are present, the Durham Regional Police Services will be responsible for security services as described in Section 8.

### **6.3.5 Courtrooms and Support Areas**

(a) These Elements include:

- Courtrooms
- Judges' secure corridor
- Judges' dias
- Prisoners' Boxes
- Courtroom counsel tables
- Court reporters and court clerks tables
- All fixtures in these areas
- Interior windows

(b) Courtrooms are similar to general assembly use facilities and should be considered as high traffic areas. Other space under this category should be considered as office space but with high degree of expected services.

### **6.3.6 General Office and Public Areas**

(a) These Elements include:

- Ground floor lobby and hallways,
- Elevators and main entrance lobbies,
- Washrooms, including public, staff crown attorneys, victim/witness, justices of the peace and judicial areas,
- Police washrooms and locker areas,
- Lunchrooms, including police lunchrooms,
- Stairwells and landings,
- Janitorial room and facilities
- Interior windows
- Offices for MAG and other occupants

(b) These premises are similar to general assembly use facilities and, with the exception of offices, should be considered as high traffic areas.

**6.3.7** Cleaning to the standards as identified in this Service Category with due note taken to the Canadian Occupational Health and Safety Regulations, (COHSR), Part 2, of all FM Components (including Building, Fixtures and Environment) as described in detail in 6.3.3, except where specifically excluded between HMQ and Project Co.

**6.3.8** Collecting lost and found articles and forwarding them to Security Services.

**6.3.9** Provision, maintenance, cleaning, storage and replacement of all cleaning equipment.

- 6.3.10** Procurement, safe storage and use of all cleaning materials required for the provision of Cleaning Services and for all costs incurred in their procurement, safe storage and use.
- 6.3.11** Provision of a listing of cleaning products used in the cleaning operation, and that
- (a)** All materials thoroughly clean the facilities, not be detrimental to the life of systems and building FM Components (e.g. floors, walls, carpet, etc.) or negatively affect indoor air quality (IAQ).
  - (b)** A copy of material safety data sheets (MSDS) of supplies used is kept on-site in accordance to WHMIS and WCB regulations.
- 6.3.12** Provision of Reactive Cleaning on a Monday to Friday, 8:00 am to 5:00 pm basis to address ad-hoc, Emergency, urgent, outbreak cleaning (to be reported either by MAG Occupant or by HMQ staff) and/or routine cleaning requests as well as WASH court operations. Project Co shall respond to such Service Requests within the Event, Failure Event or Request for Service Priorities, Response and Rectification Times as follows:
- (a)** “In-custody” holding facilities – immediate
  - (b)** Courtrooms and support areas – immediate
  - (c)** General office and public areas – within 20 minutes
- 6.3.13** Provision of a Pro-Active Cleaning Service by identifying and responding to ad-hoc, emergency, or urgent requirements at all times.
- 6.3.14** Reporting on cleanliness of washrooms and their availability as per the Payment Mechanism Section 5.6 requirements.
- 6.3.15** Implementation of and adherence to a full audit trail of all activities involved in operating and managing the service at all times. The audit trail shall be agreed in advance with HMQ management and must be available for HMQ inspection as necessary.

## **6.4 Quality Monitoring**

- 6.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Cleaning Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed between Project Co and HMQ.
- 6.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

## 6.5 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
6.5.1 Performance to Standard – Building- Fixtures and Environment	Building, Fixtures and Environment cleaned as per 6.3.3	High	Monthly	Examination of supervisor audits of work
6.5.2 Performance to Standard – “In Custody” Areas	“In Custody areas cleaned as per 6.3.4	High	Monthly	Examination of supervisor audits of work
6.5.3 Performance according to Laws and/or Regulations	All areas cleaned in accordance with 6.3.7	Medium	Monthly	Random audit
6.5.4 Handling of cleaning materials	All cleaning materials handled as per 6.3.11	Medium	Monthly	Random audit
6.5.5 Performance to Standard - Reactive	Reactive cleaning service provided as per 6.3.12	High	Monthly	Cleaning dispatch system records
6.5.6 Performance to Standard - Proactive	Proactive cleaning service provided as per 6.3.13	High	Monthly	Examination of Project Co Quality Assurance Program
6.5.7 Audit Trail	Audit trail provided as per 6.3.14	Low	Yearly	Random audit
6.5.8 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 6.4.1	Medium	Yearly	Annual occupant satisfaction surveys
6.5.9 Quality Assurance	Quality Assurance Program as per 6.4.2	Low	Yearly	Annual report
6.5.10 Reporting	All reporting by Project Co to be accurate and reliable	Low	Quarterly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session as defined in the Payment Mechanism. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **7 GROUNDS MAINTENANCE AND LANDSCAPING SERVICES**

### **7.1 Requirements**

The Grounds Maintenance and Landscaping Services include:

- 7.1.1** Maintenance of the grounds and gardens to facilitate the smooth running of the Courthouse Activities, including ensuring safe, logical, clear and barrier free access to the Project Facilities and across the site at all times for all MAG Occupants, Non-MAG Occupants and Courthouse Service users in such a way to promote a positive image of the DCC.
- 7.1.2** The policies, procedures and practices should demonstrate the environmentally responsible approach to Grounds Maintenance and Landscape Services.
- 7.1.3** The services include grounds keeping, landscaping, snow and ice removal and maintenance services for the exterior of the building.
- 7.1.4** Project Co shall prepare a periodic monitoring report in accordance with relevant aspects of this task as outlined in the Facilities Management Specification document.
- 7.1.5** Project Co shall ensure that all requisitions for services shall be completed electronically via the Help Desk (refer to Help Desk Services for details).
- 7.1.6** Project Co shall, using its onsite resources, provide ad-hoc handyman services. Ad-hoc handyman services are deemed as services that require less than two hours to complete and can be scheduled and delivered in a timely manner without impacting the overall delivery of the services.

### **7.2 Scope of Services**

- 7.2.1** Grounds Maintenance and Landscaping Services consist of three main elements as follows:
  - (a)** Grounds maintenance;
  - (b)** Gardens maintenance; and
  - (c)** Ice and snow removal.

### **7.3 Service Requirements**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with a customer service philosophy relative to Grounds Maintenance and Landscaping Services prior to commencement of services, which shall include, but not be limited to:

- 7.3.1** Provide a scheduled and demand Grounds Maintenance and Landscaping Services based on a periodic maintenance program. Project Co shall identify and schedule all preventative work, the nature of the work and the affected area(s) in a program format



agreed with HMQ. The program shall also highlight areas where HMQ's or Project Co's cooperation is required before work can be started.

- 7.3.2** Provide a full horticulture service across the Project Facilities which shall include, but not be limited to:
- (a)** Tree maintenance/surgery;
  - (b)** Lawn care, including mowing and edging;
  - (c)** Flower bed maintenance;
  - (d)** Weeding;
  - (e)** Planting, including shrubs, trees, and flower beds; and
  - (f)** Effective, but economical, irrigation procedures.
- 7.3.3** Ensure all external areas of the facility are sound, safe, tidy and maintained in accordance with the Service Standards described in 7.3.11 below and the Service Response Times and Rectification Times indicated in section 3.1.6, Table 1.
- 7.3.4** Protect from damage, all existing and new plants, site services, curbs, paving, structures, finishes and any other features, during the course of providing services.
- 7.3.5** State in advance all products intended for use during the contract:
- (a)** type of lawn and shrub fertilizers;
  - (b)** type of lime; and
  - (c)** type of herbicides and pesticides, if used.
- 7.3.6** Provide snow and ice removal and control services in a professional manner including:
- (a)** Ploughing, sanding and salting (including the application of other ice melt products);
  - (b)** Removal of snow and ice;
  - (c)** Winter fencing if required; and
  - (d)** All access areas clear of snow and ice during normal working hours on business days.
- 7.3.7** Maintain all records, showing areas occupied status, materials used, activities carried out, and date of activity and conduct inspections to ensure that all areas are in good order. Develop, document and maintain procedures required for the effective operation of the roads and paths activities to ensure availability of access to all essential areas for all services.
- 7.3.8** Provide and maintain an electronic daily log stating all work done per day. The log should be integrated in the Help Desk Services for tracking, reporting and disclosing of information.
- 7.3.9** Project Co and its staff shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Project Co shall develop and implement a Material Selection Policy consistent with the BOMA Go Green Plus Program.
- 7.3.10** Ensure that a full audit trail of all activities involved in operating and managing the service is implemented and adhered to at all time. The audit trail shall be agreed in advance with HMQ and must be available for inspection by HMQ.
- 7.3.11** Project Co shall adhere to specific maintenance and landscaping Service Standards for the grounds elements as follows.

**(a) Trees, Shrubs & Hedges**

- Trimmed, pruned and/or cut to maintain healthy growth, so as to minimize:
  - the risk of crime and/or vandalism;
  - the opportunity for storm wind damage;
  - risk of fire; obstruction of roadways, pathways, car parks, street lighting, etc.
- Are secure and safe.
- Free from dead or dying branches.
- Free from litter.
- Free from disease and/or aphid infestation.
- Replaced as and when necessary to maintain appearance.
- Appropriately watered.

**(b) Grassed Areas**

- Shall be of uniform appearance with no patches.
- Edges shall be trimmed.
- Free from mole, rabbit or other vermin infestation.
- Free from fallen leaves, weeds and litter, excrement.
- Shall be maintained to a uniform length between 25 and 50 mm.
- Appropriately watered

**(c) Flower Beds**

- Fully stocked with an appropriate mix of annual, perennial and display plants to provide aesthetically pleasing beds throughout the year, which are non-allergic to staff and the public.
- Free from fallen leaves, weeds and litter.
- Free from disease and/or aphid infestation.
- Appropriately watered

**(d) Snow and Ice Removal**

- Shall be clear of snow and ice at all times during business hours
- Application, as required, of ice melting products.
- Snow and ice shall not be permitted to accumulate more than 2 cm in depth in site circulation areas and will be removed by 0700 daily.
- Removal of snow and ice to reduce the risk of injury and accident.
- No tolerance of snow accumulation on site. It will have to be removed immediately unless the site has dedicated area for snow collection.

**(e) Site Circulation Routes**

- Sound safe and even surface with no potholes or sinking.
- Free from standing water, ice, and snow.
- Free from fallen leaves, moss, algae or interstitial weeds.
- Free from fallen trees.
- Curbs and edgings are sound.

- No loose curbs or paving stones.
- Road markings and parking striping are clear and complete.
- Free from graffiti and/or vandalism.
- Provides for barrier-free access.

## 7.4 Quality Monitoring

**7.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Grounds Maintenance and Landscaping Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed between Project Co and HMQ.

**7.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

## 7.5 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
7.5.1 Performance to Standard – General	Scheduled and reactive grounds and landscaping maintenance provided as per 7.3.1	High	Monthly	Examination of supervisor inspection logs
7.5.2 Performance to Standard - Horticulture	Horticultural service provided as per 7.3.2, 7.3.5 and 7.3.11	Medium	Monthly	Examination of supervisor inspection logs
7.5.3 Performance to Standard – Snow and Ice Removal	Snow and Ice Removal provided as per 7.3.3, 7.3.6 and 7.3.11.	High	Monthly	Logs of snow removal and ice prevention activities
7.5.4 Performance to Standard –Circulation Routes	Site Circulation routes maintenance provided as per 7.3.3, 7.3.4 and 7.3.11	High	Monthly	Random audit

7.5.5 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 7.4.2	Medium	Yearly	Annual user satisfaction surveys
7.5.6 Quality Assurance	Quality Assurance Program as per 7.4.2	Low	Yearly	Annual report
7.5.7 Daily Log and Reporting	A daily log of grounds maintenance activities is maintained and accessible from an agreed location on-site. Reporting by Project Co to be accurate and reliable.	Low	Quarterly	Random audit
7.5.8 Audit Trail	Audit Trail provided as per 7.10	Low	Yearly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

**8 SECURITY SERVICES**

**[REDACTED]**

## **9 UTILITIES MANAGEMENT SERVICES**

The function of Project Co in this Service Category is to ensure the availability of suitable Utilities Management Services for the Project Facilities.

### **9.1 Requirements**

Project Co shall provide Utilities Management Services 24 hours per day, 365(6) days per year on a scheduled and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall:

- 9.1.1** Procure and continuously provide all necessary Utilities to meet the requirements of the Project Facilities efficiently, economically, and with due regard to general principles of energy efficiency and to the mandatory LEED credits identified in Schedule B, Project Works, Part 1: design Requirements Volume 1 of 2 and as identified in the LEED Checklist.
- 9.1.2** Prepare a periodic monitoring report detailing ongoing performance to HMQ.
- 9.1.3** Exercise competent supervision of the work at all times.
- 9.1.4** Ensure that all requisitions related to Utilities Management Services may be completed electronically via the Help Desk.

### **9.2 Scope of Services**

**9.2.1** Utilities Management Services consist of the following elements:

- (a)** Procurement and Management; and
- (b)** Quality Monitoring.

### **9.3 Service Requirements**

In providing the Utilities Management Services, Project Co shall develop and implement appropriate policies, procedures and practices, together with a customer service philosophy, relative to the provision of Utilities Management Services prior to commencement of service which shall include, but not be limited to:

- 9.3.1** Procure and manage, subject to the provisions in the Agreement and Schedule M - Energy Matters, all Utility Management Services including, but not limited to:
  - (a)** Electricity;
  - (b)** Natural gas/fuel oil;
  - (c)** Water (including water conservation);
  - (d)** Sanitary Waste; and
  - (e)** Storm Water.
- 9.3.2** Ensure the service is cost effective, comprehensive in nature, addresses all technical, managerial, operational and purchasing issues, and maintains the integrity of supply of Utilities. The Utilities Management Services shall include, but not be limited to:

- (a) Administering hazard and safety notices, recording, distributing and evaluating such notices and ensuring that all required notification procedures regarding any equipment or plant failure are complied with.
  - (b) Providing, managing and operating of an effective building management system that includes an integrated energy management system.
  - (c) Ensuring that Project Co Staff are made aware of the aims of the energy policy and are given guidance on its implementation.
- 9.3.3** Liaise with the Justice Technology Service Division of MAG for the provision of telephone and IT services. Project Co will ensure all physical connections are provided and maintained at all times.
- 9.3.4** Be responsible for:
- (a) Securing and maintaining connections to Utility company services of appropriate specifications and adequate capacity to supply the requirements of HMQ under all anticipated operating conditions (including standby provisions in the event of an earthquake or other catastrophic events).
  - (b) Undertaking all testing, cleaning and maintenance, including such activities as required by the Utility Company.
  - (c) Putting in place a procurement procedure that ensures access to Government supply arrangements with utility companies or other lower cost arrangements that Project Co can negotiate.
  - (d) Providing the necessary reporting to enable the implementation of the various provisions included in Schedule M -Energy Matters of the Agreement.
- 9.3.5** Regularly review and amend as required the utility supply specifications such that they are consistent with the requirements of the Project Facilities.
- 9.3.6** Ensure that an adequate continuous supply of all Utilities is available 24 hours per day, 365(6) days per year to all applicable building locations for the duration of the Project Agreement. In the event that there is a disruption from the Utility Company, Project Co will ensure that the supply of emergency utilities as defined in Design Requirements are in place and functioning.
- 9.3.7** Inform HMQ of all scheduled interruptions to any utility supply that may or may not affect HMQ and/or Project Co's operations, immediately upon notice of disruption.
- 9.3.8** Maintain appropriate records in relation to all specific permits and license requirements where Project Co is responsible for obtaining for its provision of the services, such permits and licenses including, but not limited to:
- (a) Ensure all test certificates and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) are maintained accurately and updated appropriately and are available for inspection by HMQ or any other Governmental Authorities.
  - (b) Ensure all information and records are up-to-date, precise and accurate and available for inspection by HMQ or any other Governmental Authorities.
  - (c) Prepare and supply all information reasonably required by any party, to whom HMQ are obliged to present information at any time in relation to the performance of the Utility Management Services, plus all statistical records which may be required provincially or federally.
  - (d) Maintain records detailing any complaints made with respect to the service and action taken.

- (e) Where HMQ is responsible, Project Co shall only be obliged to maintain records that have been provided to it by HMQ.
- (f) Project Co and Project Co Staff shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every six Contract Months Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.

**9.4 Quality Monitoring**

- 9.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Utilities Management Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out quarterly.
- 9.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.
- 9.4.3** As part of the BOMA Go Green Plus Program implementation, Project Co will conduct an energy audit and a water audit every 3 years based on the BOMA Go Green Comprehensive requirements and submit it to HMQ. Included under this requirement is the support to HMQ to provide the necessary reporting to enable the implementation of the various provisions included in Schedule M - Energy Matters

**9.5 Service Standards**

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
9.5.1 Performance to Standard - General	Utilities as per scope (9.3.1) are delivered as per 9.3.2 and 9.3.3	High	Monthly	Random audit
9.5.2 Performance to Standard – Operations and Maintenance	Responsibilities undertaken as per 9.3.4	High	Monthly	Random audit
9.5.3 – Monthly Utilities Report	Listing and detailing all Utilities consumed during the month, suppliers and any disruptions as per 9.3.4 and 9.3.5	Medium	Monthly	Report



9.5.4 Scheduled Interruptions	HMQ informed of scheduled interruptions as per 9.3.7	High	Yearly	Annual utility report
9.5.5 Record Keeping and Reporting	Records and Reports as per 9.3.8 (e)	Low	Yearly	Annual utility report
9.5.6 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 9.4.1	Medium	Yearly	Annual occupant satisfaction surveys
9.5.7 Quality Assurance	Quality Assurance Program as per 9.4.2	Low	Yearly	Annual utility report
9.5.8 BOMA Go Green Comprehensive Energy Use Audit	Energy Use - Phase 1 Audit as per BOMA Go Green Plus Program	Low	Every three years	Report
9.5.9 BOMA Go Green Comprehensive Water Use Audit	Water Use – Phase 1 Audit as per BOMA Go Green Plus Program	Low	Every three years	Report

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **10 PLANT SERVICES**

The function of Project Co in this Service Category is to ensure the availability of a suitable Plant Services operation to respond to the needs of MAG Occupants, Non-MAG Occupants and Courthouse Service Users.

### **10.1 Requirements**

- 10.1.1** Project Co shall provide Plant Services 24 hours per day, 365(6) days per year on a scheduled and demand basis as may be required to meet the Service Standards of this Service Category. Project Co shall:
- (a)** Provide efficient, responsive, continuous, reliable, comprehensive and effective Plant Services, including basic and first response maintenance of all building and site systems and equipment
  - (b)** Provide Plant Services which are based on sound technical and operational requirements and standards in accordance with Applicable Law and Good Industry Practice, in order to meet the operational needs of HMQ.
- 10.1.2** Project Co shall prepare a periodic monitoring report.
- 10.1.3** Project Co shall exercise competent supervision of the work at all times.
- 10.1.4** Project Co shall ensure that all requisitions for Plant Services may be completed electronically via the Help Desk.
- 10.1.5** Project Co shall ensure compliance with life-cycle replacement and renewal plans for all building and site, systems and equipment as per Section 14.
- 10.1.6** Project Co shall provide Plant Services related delivery functions (e.g. movement of equipment).
- 10.1.7** Project Co shall, using its onsite resources to the extent available, provide ad-hoc plant and handyman services.
- 10.1.8** Project Co shall develop and implement policies and processes that are consistent with the BOMA Go Green Plus Program, such policy shall include a Material Selection policy as well as processes to address occupant concerns.

### **10.2 Scope of Services**

- 10.2.1** Plant Services consist of the following elements:
- (a)** Statutory Testing and Permission to Work;
  - (b)** Building and Equipment Maintenance;
  - (c)** Fire Management;
  - (d)** Elevators and Escalators;
  - (e)** Plant Services Information Management;
  - (f)** Building and Systems Standards; and
  - (g)** Quality Monitoring.

### 10.3 Service Requirements

In providing the Plant Services, Project Co shall develop and implement appropriate policies, procedures and practices, together with a customer service philosophy, relative to the provision of Plant Services prior to commencement of service which shall include, but not be limited to:

#### 10.3.1 Statutory Testing and Permission to Work

- (a) Maintain records of all statutory and regulatory tests and legislation, which may be required to be carried out by Government Authorities. Undertake where appropriate insurance, statutory and regulatory tests which may be required by Applicable Law, or by insurers in liaison between Project Co management staff and HMQ management staff.
- (b) Conduct an annual review of maintenance manuals and concurrent updating of changes or notifications by manufactures/suppliers. Report to HMQ's Representative or designate on such changes annually.
- (c) Scheduled Maintenance work on building systems or equipment shall be scheduled by Project Co outside the hours of 9:00 AM to 5:15 PM on weekdays and 9:00 AM to 3:00 PM on weekends and statutory holidays.
- (d) Where continuity of work precludes such an arrangement, Project Co shall apply to HMQ through management staff with a 30-day advance notice, for permission to perform such work. Where emergency work is required, Project Co will immediately notify HMQ and proceed with the work. Where such disruptions are determined by Project Co to be minimal, shorter requests for permission may be made.
- (e) In the event that a Space is in use access times as follows:
  - For Scheduled Maintenance, as agreed with HMQ management staff and in the time period specified in the Scheduled Maintenance Plan.
  - For Demand Maintenance, as required to meet the relevant Event, Failure Event or Request for Service Priorities, Response and Rectification Times (Table 1) in Section 3.1.6.
  - For Plant Services Information Management System, as agreed with HMQ management staff and in the time period specified in the Information Management Maintenance Program.
  - For fire management, as agreed with HMQ management staff, as coordinated Security Services, outlined in Section 8, and in the time period specified in the Fire Management Maintenance Program.
  - HMQ may inform Project Co that Plant Services shall not be carried out in order to avoid disruption to Courthouse Activities. Project Co Staff shall liaise with HMQ management staff to agree upon an alternative time to carry out the Plant Services. Where Project Co subsequently carries out the Plant Services at the agreed alternative time, Project Co shall be deemed to have met the service requirements.

### **10.3.2 Building and Equipment Maintenance**

- (a)** Provide a complete and comprehensive Demand Maintenance service, by way of a Help Desk. This shall include a service giving immediate technical and managerial support and advice 24 hours per day, 365(6) days per year. The service shall be consistently delivered, sensitive to MAG's needs and responsive to the changing MAG program requirements.
- (b)** Establish and maintain suitable systems and procedures to ensure that Scheduled Maintenance is carried out at such times and in such manner that the Service Standards and regulatory requirements are met.

#### **(c) Building**

- Scheduled and Demand Maintenance, including maintenance, repair, and updating, where appropriate, of
  - Basement walls
  - Moisture protection
  - Sprayed fireproofing, fire stopping and smoke seals
  - Stairs and landings
  - Exterior and interior painted surfaces
  - Domestic water distribution and drainage systems
  - Heating, ventilating and air-conditioning systems, including air, steam, hydronic and other distribution systems
  - Refrigeration system, including chillers, cooling towers, evaporative coolers and dry condensers, direct expansion systems and refrigeration piping
  - Terminal and packaged units, including hydronic and gas-fired unit heaters, make-up air units, infrared radiant heating and indirect gas-fired furnaces
  - Controls and instrumentation
  - Electrical systems, including elements space requirements, service and distribution, surge protection devices, lighting, power and branch wiring and diesel generators.
  - Communications and security systems including, intercom, door control, audio and video surveillance, duress and parking alarm, integrated security, master clock, telephone, uninterruptible power, fire alarm and associated structured cabling system.

#### **(d) Fire Equipment:**

- As coordinated with Security Services, Scheduled and Demand Maintenance, including maintenance, repair, and updating, where appropriate, of all fire prevention/detection equipment, including fire safety systems and equipment, automatic fire detection and alarm systems, fire sprinklers, standpipe and hose

networks, fire extinguishers, including carbon dioxide, wet chemical, dry chemical, clean agent and foam, as may be required from time to time to maintain all fire equipment in compliance with applicable legislation. Where any such equipment requires replacement, Project Co shall replace such equipment with equipment of equivalent or higher standard.

- Establish and maintain suitable systems and procedures to ensure that all fire equipment is examined and tested and includes records of all tests and the dates thereof in an accurate and sufficiently detailed manner. The fire alarm system shall be inspected and tested according to CAN/ULC-S536-97.

**(e) Other Equipment**

- Scheduled and Demand Maintenance, including maintenance, repair, and updating, where appropriate of
  - Detention equipment, including doors, frames and screens
  - Vehicular equipment, including parking control and loading docking equipment
  - Window washing equipment, including, monorails and trolleys, window washing anchors and roof-rigged davits.
  - Miscellaneous items that are not MAG FF&E, including whiteboards and bulletin boards, projection screens, stainless steel corner guards, wall bumper guards, chair rails and bollards.

**(f)** Other than MAG FF&E and Non-MAG Occupant FF&E, provide, purchase and install, of all requisite plant, equipment, apparatus and consumable items required for the proper execution of all work which Project Co is required to carry out under this Service Category.

**(g)** Whenever possible Project Co shall avoid the need for service diversions. Where diversions are necessary, Project Co management staff shall (other than in an Emergency) contact HMQ and gain approval to divert the same as required. The work shall be carried out with the minimum of interference to existing installations and Courthouse Activities.

**(h)** Supply sufficient authorized persons, who are competent and experienced, with appropriate trade certification, and are available 24 hours per day, 365(6) days per year.

**(i)** Provide a Scheduled Maintenance service, which actively reduces the risk of disruption and maintenance work adversely affecting Courthouse Activities.

**(j)** Produce and issue to HMQ for approval:

- Rolling 5 Year Maintenance Plan for the Project Facilities, including life-cycle maintenance, planned improvement and replacement programs, and a report for the facilities, on every anniversary of the Agreement, from the Completion Date, in a format to be agreed between the parties.
- Detailed Scheduled Maintenance Programs for every 12-month period which shall be submitted to HMQ at least 4 months in advance of the Completion

Date or subsequent anniversary. The Scheduled Maintenance programs shall include but not be limited to information relating to any implication arising from carrying out the work content of the report and its effects, if any, on Courthouse Activities while work is in progress.

- A Monthly Maintenance Report for each Contract Month, in a format agreed with HMQ which includes:
  - All Scheduled Maintenance and Demand Maintenance undertaken in that month
  - A schedule of all failures to comply with the requirements of this Service Category and Project Co's procedures in connection with the provision of Plant Services as previously agreed with HMQ.
  - Details of training of personnel, changes of personnel and changes to established working practices that have occurred in that month and that shall be undertaken during the following two months.
  - Such reports as required by Applicable Law, informing HMQ which statutory reports have been carried out and making available to HMQ copies of such reports.

### **10.3.3 Fire Management Requirements**

- (a) Maintain in readiness and implement where necessary, contingency plans should any of the fire safety systems in the Project Facilities fail to function as intended.
- (b) Ensure Project Co Staff shall, at any time they believe that any matter constitutes a fire risk, report this immediately to Project Co's nominated fire officer and take such remedial action as may be necessary.
- (c) Ensure all Project Co Staff are given fire safety instruction/education in compliance with the National Fire Code of Canada.
- (d) Ensure currency of Fire Alarm System Certification.
- (e) Report all circumstances where Project Co believes, MAG Occupants or Non-MAG Occupants are conducting their activities contrary to compliance with Applicable Law relating to fire safety.

### **10.3.4 Elevators and Escalators**

The following guidelines shall apply specifically to building elevators and escalators:

- (a) Neither routine maintenance nor elevator failure shall render unavailable all elevators in a bank of elevators or all elevators servicing an Element.
- (b) Project Co shall immediately respond (as required in Section 3.1.6) to all elevator alarms or telephone calls from an elevator and initiate the required action to rectify faults and release occupants.
- (c) Project Co should have personnel on Site to immediately attend to minor elevator faults and release occupants as soon as practicable given the nature of the fault.
- (d) In the event of mechanical failure, elevator occupants must be released from the elevator as soon as practicable, and in any event within 30 minutes if the failure occurs or persists during the period from 8:00 AM to 5:00 PM, and within 45 minutes otherwise.

- (e) Emergency call-backs for escalator failure must be responded to within 30 minutes (45 minutes outside the 8:00 AM to 5:00 PM period) from the time the failure is reported.
- (f) Elevator/Escalator Availability, for any one elevator/escalator shall be 99.0% as measured over a Contract Month.

### **10.3.5 Plant Services Information Management**

- (a) Project Co shall provide and keep current a comprehensive, Plant Services Information Management System that shall be capable of:
  - Providing a user-friendly Plant Services information input vehicle for use by all relevant Project Co Staff in complying with the records keeping requirements of this Service Category.
  - Producing reports on Plant Services records and information as required by this Services Category for HMQ or other applicable Government Authorities.
  - Providing accurate and timely information to Project Co in the administration of Plant Services operations and ongoing business.
  - Meeting HMQ's interfacing standards such that both Project Co and HMQ's information systems are compatible.
  - Reporting on trends related to equipment maintenance or failures
  - Backup and storage in safe custody of the data, materials and documents.
- (b) Project Co shall collect, manage and update all Plant Services records and information on behalf of HMQ. This shall include but not be limited to information regarding:
  - Physical characteristics of the Project Facilities including, but not limited to:
    - The description and address of the facilities.
    - All area and building volume data.
    - Condition surveys.
    - All location plans, boundaries and titles relating to the Site.
    - Up-to-date CAD drawings in the HMQ format for the Project Facilities, which are to be linked to HMQ systems to current CAD standards. Ensure that all systems provided are compatible for access of information by the HMQ Representative and Project Co.
- (c) Project Co shall ensure that all CAD and line drawings are kept up to date and a new set of drawings are to be provided to HMQ annually in the format requested by HMQ, unless no changes have occurred in the preceding year and accordingly, Project Co shall advise HMQ annually that the most recently delivered drawings remain current and are expected to remain current for the next six Contract Months.
- (d) Project Co shall maintain records and details of legal or equitable interests in or rights over the Project Facilities and, in addition, Project Co shall retain to keep safe all original documentation relating to any such rights or interests.

- (e)** Project Co shall maintain records and details of specific license requirements where Project Co is responsible for obtaining such licenses. Where HMQ is responsible, Project Co shall only be obliged to maintain records that have been provided to it by HMQ.
- (f)** Project Co shall test certificates and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) shall be maintained accurately and shall be updated appropriately and shall be available for inspection by HMQ or any other relevant authorized party.
- (g)** Project Co shall use data and communications systems which are compatible with HMQ systems.
- (h)** Project Co shall ensure all information and records are complete, precise and clearly identifiable. All such information shall be available for inspection at the reasonable request of HMQ's Representative or designate or any other relevant authorized person.
- (i)** Project Co shall maintain hazard notices and safety signs including those issued by HMQ and maintain a record of all such hazard notices and safety signs and put in place procedures to ensure they are located and displayed correctly, and are fully serviceable.
- (j)** Project Co shall prepare and supply all information reasonably required by any person, firm, Governmental Authority to whom HMQ is obliged to present information at any time in relation to the performance of the Plant Services.
- (k)** Project Co and Project Co Staff shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every six Contract Months, Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.



### 10.3.6 Building and Systems Quality Standards

#### (a) Base Building Standards

In general, all FM Components of building fabric, fixtures and fittings, floor and floor coverings, and equipment shall at all times be functional, operational and satisfy the same performance requirements as required to achieve Completion, subject to Normal Wear and Tear.. Maintenance of building FM Components must ensure compliance with the Canadian Occupational Health and Safety Regulations, (COHSR), Part 2.

### 10.3.7 Building Systems Standards

- (a) In general, all FM Components of building systems and services shall at all times be functional, operational and satisfy the same performance requirements as required to achieve Completion and Canadian Occupational Health and Safety Regulations, (COHSR) Part 2.

FM Element	Standard
Domestic Water and Other Drainage Systems	<ul style="list-style-type: none"> <li>● Shall function as intended, without undue noise and vibration.</li> <li>● Provide a safe and comfortable environment.</li> <li>● All pipe work and fittings shall be fastened securely to their intended points of anchorage.</li> <li>● There shall be no leakage of waste and/or foul water and/or rain water.</li> </ul>
Heating, Ventilation and Air Conditioning Systems <ul style="list-style-type: none"> <li>● Air, Steam, Hydronic systems</li> <li>● Refrigeration system</li> <li>● Terminal and Packaged Units</li> </ul>	<ul style="list-style-type: none"> <li>● HVAC systems shall be balanced by personnel trained in the application of ASHRAE Standard 111.1988.</li> <li>● All ventilation systems shall function as intended in compliance with Acoustic Performance Criteria indicated in RDS (Room Design Standards).</li> <li>● Air changes and ventilation levels shall be as specified in the HMQ Design Requirements PS D3000 para 3.12. Minimum fresh air: Not less than ASHRAE Standard 62 of 0.812 L/s. sq. m. of gross floor area or 10 L/s per person, whichever is greater. CO2 levels to be not greater than 850 ppm as measured in the occupied area. They must also take into account CSA Guideline Z204-94, entitled Guideline for Managing Air Quality in Office Buildings, dated June 1994;</li> <li>● Reporting mechanism that is consistent with ASHRAE 55 including acceptable temperature ranges depending on the season</li> <li>● Ductwork, fittings and pipe work shall be securely fastened to their intended points of anchorage.</li> <li>● There shall be no persistent or unreasonable leakage of</li> </ul>

	<p>water (or other heating/cooling medium) or air from ventilation systems.</p> <ul style="list-style-type: none"> <li>• Secure to authorized access only.</li> <li>• Free from corrosion, erosion and organic growth.</li> </ul>
Electrical Systems – Control and Lighting	<ul style="list-style-type: none"> <li>• Lighting, safety and alarm systems shall function as intended without undue noise or vibration; wiring, fittings, fixtures, controls and safety devices shall be properly housed and fastened securely to their intended point of anchorage and labeled.</li> <li>• Light levels to be maintained according to IESNA Lighting Handbook for each specific area of usage and ANSI/IES 90.1 for courthouse lighting.</li> <li>• Integrated Security System and all FM Components to be fully operational at all times.</li> <li>• All systems shall be sound, secure, safe and free from damage.</li> <li>• All systems must operate as designed and should be installed according to HMQ Design Requirements D50.</li> <li>• All systems shall be suitable for use by the elderly and disabled.</li> <li>• Replacement of light elements.</li> </ul>
Electrical Systems - Medium Voltage and High Voltage Distribution Systems <ul style="list-style-type: none"> <li>• Breakers/fuses</li> <li>• Isolators</li> <li>• Distribution Panels</li> </ul> Exposed Cables	<ul style="list-style-type: none"> <li>• Ratings shall be clearly marked.</li> <li>• Contacts and connections clean and mechanically tight</li> <li>• No overheating during normal operating loads</li> <li>• Regularly clean all switchgear and transformers.</li> <li>• Do injection testing at least every two years.</li> <li>• Secure to authorized access only.</li> <li>• Recording instruments shall be operational where necessary.</li> <li>• Testing of all protective relaying including injection testing shall be carried out every two years.</li> <li>• Check electronic operation of all breakers and that the power source is battery operated.</li> <li>• Test all alarm functions.</li> <li>• Identification notices where necessary.</li> </ul>
Electrical Systems - Emergency Power Supply	<ul style="list-style-type: none"> <li>• Standby diesel power supply shall be operational, secure and tested regularly in compliance with National Fire Code of Canada, Section 6.7.1.1 and CSA C282 “Electrical Power Supply for Buildings” and free from dust. Standby power should be consistent with the areas in the buildings that require it as per the HMQ Design Requirements PS D5030 Section 3.1 for the building and for the periods specified.</li> <li>• Balance load between diesel generators.</li> <li>• Test using live loads and demonstrate transfer scheme.</li> </ul>

	<ul style="list-style-type: none"> <li>• Emergency lighting units shall comply with CSA Standards, tested regularly, operational and fully charged.</li> <li>• Batteries shall be adequately ventilated, free from acid leakage, and shall be topped up and fully charged.</li> </ul>
<p>Communications Systems</p> <ul style="list-style-type: none"> <li>• Intercom</li> <li>• Door control</li> <li>• Parking Alarm</li> <li>• Audio Surveillance</li> <li>• Video Surveillance</li> <li>• Master Clock</li> <li>• Telephone</li> <li>• UPS</li> <li>• Fire Alarm</li> </ul>	<ul style="list-style-type: none"> <li>• Maintained in accordance with all relevant codes and standards.</li> <li>• All electrical communications and data transmission installations shall comply with CSA C22.1-98 (Canadian Electrical Code Part 1 (18th Edition, Safety Standard for Electrical Installations))</li> <li>• Fully operational within OEM standards.</li> <li>• Shall function as intended.</li> </ul>
<p>Fire Fighting Equipment</p> <ul style="list-style-type: none"> <li>• Extinguishers</li> <li>• Sprinklers</li> <li>• Hoses</li> <li>• Fire Equipment</li> </ul>	<ul style="list-style-type: none"> <li>• Maintained in accordance with the latest edition of Section 6 of the National Fire Code of Canada, issued by the Canadian Commission on Building and Fire Codes, National Research Council of Canada, Ottawa,</li> <li>• Sound, secure and fixed to their intended point of anchorage.</li> <li>• Fully operational within manufacturer's recommendations.</li> <li>• Hydrants, sprinklers &amp; hoses shall be at correct operating pressure and capacity.</li> <li>• Pipe work shall be free from corrosion, leaks and drips</li> <li>• Be of suitable type and quantity for the hazards present within their vicinity.</li> </ul>
<p>Equipment – General</p> <ul style="list-style-type: none"> <li>• Audio-Visual</li> <li>• Detention</li> <li>• Vehicular</li> <li>• Window Washing</li> </ul>	<ul style="list-style-type: none"> <li>• Specified A/V equipment fully operational at all times within OEM standards</li> <li>• Parking control and loading dock equipment to be fully functional at all times</li> <li>• Detention facilities to be checked daily to ensure integrity has not been compromised</li> </ul>

External Sign Posting (including lighting)	<ul style="list-style-type: none"> <li>● Secure and sound.</li> <li>● Highly visible, both day and night.</li> <li>● Offer clear and concise information.</li> <li>● Free from graffiti and/or vandalism.</li> <li>● Replacement of light elements.</li> <li>● Compliant with the Ontario Disabilities Act</li> </ul>
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## 10.4 Quality Monitoring

- 10.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Plant Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out annually.
- 10.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.
- 10.4.3** As part of the BOMA Go Green Plus Program implementation, Project Co will conduct an energy audit and a water audit every three years based on the BOMA Go Green Comprehensive requirements and submit it to HMQ. Included under this requirement is the support to HMQ to provide the necessary reporting to enable the implementation of the various provisions included in Schedule M (Energy Matters).
- 10.4.4** Ensure that a full audit trail of all activities involved in operating and managing the service is implemented and adhered to at all time. The audit trail shall be agreed in advance with HMQ management and must be available for HMQ inspections.

## 10.5 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
10.5.1 Statutory Testing	All Statutory Testing and Permission to do work is carried out and reported upon as per 10.3.1	Medium	Monthly	Report
10.5.2 Building and Equipment Maintenance	The building Project Assets and its Equipment and Systems are subject to maintenance and reporting procedures as per 10.3.2.	Low	Yearly	Random audit
10.5.3 Fire Management	Fire Management procedures as per 10.3.3	High	Yearly	Report
10.5.4 Lifting Devices	Elevators and escalators are operated and maintained as per 10.3.4	High	Yearly	Report
10.5.5 Information Management	Plant Services information is managed as per 10.3.5	Medium	Monthly	Random audit
10.5.6 Drawing Management	All CAD and line drawings are kept up to date as per 10.3.5(c)	Low	Yearly	Report
10.5.7 Performance to Standard – Base Building	Base Building standards for the building fabric and its fixtures and fittings are maintained as per 10.3.6	Medium	Monthly	Random audit
10.5.8 Performance to Standard - Building Systems	Building Systems standards for supply of emergency power, medium and high voltage distribution, HVAC, sanitary and drainage, fire fighting equipment, communications systems, electrical systems, external signage and lighting and the building site are maintained as per 10.3.7	High	Monthly	Report
10.5.9 Policies and Procedures	Operational policies and procedures are current and adhered to. Reports of non-adherence to be provided to HMQ representative every 6 Contract Months	Medium	Yearly	Report
10.5.10 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 10.4.1	Medium	Yearly	Annual occupant satisfaction survey

10.5.11 Quality Assurance	Quality Assurance Program is in place as per 10.4.2	Low	Yearly	Annual report
10.5.12 Audit Trail	Audit Trail provided as per 10.4.4	Low	Yearly	Random audit
10.5.13 Reporting	All reporting by Project Co to be accurate and reliable	Low	Quarterly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## 11 HELP DESK SERVICES

The function of the Help Desk is to act as a communications and tracking hub for all Service Categories, whether provided by or arranged for by Project Co. In this role, it will receive, log and take action on all service requests, all the while maintaining and updating the work order system and building information database.

### 11.1 Requirements

**11.1.1** The Help Desk function may be physically located on-site or at a location to be specified by Project Co.

**11.1.2** The Help Desk Services include:

- (a)** Help Desk Services 24 hours per day, 365(6) days per year on a scheduled, proactive and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall achieve the following objectives:
  - Provide high quality, efficient, innovative and flexible Help Desk Services at all times.
    - Provide a sufficient number of qualified, trained and competent employees or sub-contracted employees with the skills within each Service Category.
    - Develop and maintain an auditable quality plan which is representative of the services being provided and reflects the requirements of HMQ.
    - Research and develop new service delivery methods and apprise HMQ of their benefits.
    - Provide a comprehensive, effective, flexible and efficient Help Desk Services to facilitate the efficient running of Courthouse Activities, to act as a communication and tracking hub for all the services.
    - Manage matters and marshal resources as required to participate in Emergency responses, and to provide a high level of customer care.
  - With HMQ, Project Co shall maintain and update, as necessary, of the listing of Definitions relevant to this Service Category and common to all Service Categories.
  - Reasonable and competent supervision of the work at all times and of Project Co Staff performing services under this Agreement.
  - In providing the services, Project Co will also consider the needs and interests of:
    - The judiciary, staff, visitors and the general public; and
    - Subcontractors of HMQ.
    - Project Co shall prepare a periodic monitoring report in accordance with relevant aspects of this Service Category

## 11.2 Scope of Services

Help Desk Services consist of the following elements:

- (a) Help Desk Services;
- (b) Proactive initiation and tracking of building services work orders;
- (c) Quality Monitoring; and
- (d) Work order and building database repository.

## 11.3 Service Requirements

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with a customer service philosophy, relative to Help Desk Services prior to commencement of Service which shall include, but not be limited to:

**11.3.1** Provision of Help Desk Services 24 hours per day, 365(6) days per year, with provisions for backup, if required, which shall form the day-to-day notification interface between HMQ and Project Co and any of its Subcontractors in relation to the following matters:

- (a) All enquiries and Service Requests for assistance relating to the services (excluding MAG reception services).
- (b) The notification of Events and Failure Events and complaints or compliments from any of the customers relating to the services.
- (c) Service Requests for temporary changes to the delivery and scope of service.
- (d) Monitoring of alarms and security systems.
- (e) Implementation and management of a function booking system, including the following details:
  - function type and details;
  - record of all food Service Requests;
  - contact details of the client; and
  - an authorized budget code.
- (f) Notification of accidents or Emergencies.
- (g) Request for information relating to the operation of the Help Desk Services.
- (h) Update of progress regarding any Events and Failure Events notified to the Help Desk.

**11.3.2** Updates to the instructions shall be provided to HMQ from time-to-time, as necessary.

**11.3.3** Following the completion of the user instructions, ensure all MAG Occupants and Non-MAG Occupants are familiar with these Help Desk Services instructions.

**11.3.4** Project Co shall make the initial determination and categorize each and every Service Request and Event using the classification (priority) protocol outlined in Table 1: Failure or Request for Service Categories, Response and Rectification Times, in Section 3.1.6.

**11.3.5** Project Co will maintain, as part of the Help Desk Services, a daily electronic log of all Service Requests and calls reporting Events or Failure Events. The Help Desk Services shall record into the electronic log all relevant details, including, but not limited to, the following information:



- (a) Help Desk operator's name;
  - (b) Requester's name;
  - (c) Date and time;
  - (d) Location;
  - (e) Nature of the request, Event, or Failure Events;
  - (f) Service required;
  - (g) Classification (priority);
  - (h) Unique request reference identifier;
  - (i) Project Co and contact name to which the request was passed;
  - (j) Date and time request passed to the relevant subcontractor;
  - (k) Action taken and by whom; and
  - (l) Service Response Time and Rectification Time.
- 11.3.6** Project Co will act, as part of the Help Desk Services, as the central repository of the building data base information and operational work orders system.
- 11.3.7** Project Co will not delete or alter any details recorded by the Help Desk unless approved by HMQ's Representative or designate and the following information is recorded:
- (a) The exact nature and impact of the amendment;
  - (b) The reason for the amendment; and
  - (c) By whom the amendment was authorized.
- 11.3.8** Ensure the Help Desk Services personnel answer all telephone calls within three rings of the telephone.
- 11.3.9** The Help Desk Services will maintain confidentiality consistent with the requirements of the Agreement.
- 11.3.10** Project Co's Help Desk system must interface with its accounting and reporting system.
- 11.3.11** Project Co Staff and its Subcontractors' employees shall at all times adhere to, update and maintain as current the Help Desk operational policies and procedures set out and agreed with HMQ. Every six Contract Months, Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.

#### **11.4 Quality Monitoring**

- 11.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Help Desk through the conduct of a customer user satisfaction survey/questionnaire to be carried out annually.
- 11.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested

## 11.5 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
11.5.1 Performance to Standard - Availability	Help Desk Services is available 24 hours per day, 365(6) days per year and has provisions for backup as per 11.3.1	High	Monthly	Random audit
11.5.2 Performance to Standard - Response	Provide response to Service Requests as per 11.3.4 and 11.3.8	High	Monthly	Random audit
11.5.3 Daily Logs	Maintain daily electronic log as per 11.3.5	Medium	Monthly	Random audit
11.5.4 Confidentiality	Maintain confidentiality as per 11.3.9	High	Yearly	Random audit
11.5.5 Policies and Procedures	Operational policies and procedures are current and adhered to as per 11.3.10.	High	Yearly	Report
11.5.6 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 11.4.1	Medium	Yearly	Annual occupant satisfaction surveys
11.5.7 Quality Assurance	Quality Assurance Program is in place as per 11.4.2	Low	Yearly	Report
11.5.8 Reporting	All reporting by Project Co to be accurate and reliable	Low	Quarterly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **ENVIRONMENTAL SERVICES**

### **12.1 Requirements**

The Environmental Services include:

- 12.1.1** Maintenance of a safe, compliant, functional working, barrier-free, environment, applying the necessary available safe working practices, including the use of recognized risk assessment/management systems to ensure that standards are maintained, and that any adverse variance is recognized and corrected.
- 12.1.2** Environmental Services on a scheduled and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall achieve the following objectives:
  - (a)** Ensure that it does not cause or create any safety or environmental hazard to the environment and/or any person in the building or on the site, and to minimize disruption to Courthouse Activities.
  - (b)** Ensure Service Standards are achieved through provision of a flexible Environmental Services team with a culture that incorporates continuous development and innovation relating to changes in HMQ's needs, together with equipment, effective management systems, clear performance targets and appropriate levels of monitoring.
- 12.1.3** Reasonable and competent supervision of the work at all times and of all Project Co Staff performing services under this Service Category.
- 12.1.4** Preparing a periodic monitoring report in accordance with relevant aspects of this task as outlined in this Service Category.
- 12.1.5** Ensuring that all requisitions for Environmental Services may be completed electronically via the Help Desk.

### **12.2 Scope of Services**

Environmental Services consist of the following elements:

- (a)** Internal & External Environment;
- (b)** Waste and Pest Management;
- (c)** Mould Management; and
- (d)** Quality Monitoring.

### **12.3 Service Requirements**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with a customer service philosophy, relative to Environmental Services prior to commencement of service which shall include, but not be limited to:

#### **12.3.1 Internal and External Environment**

- (a)** Project Co shall maintain the Project Facilities to the standards specified in this Service Category at all times.
- (b)** Services shall be performed in a careful and environmentally responsible fashion to minimize effects on the environment.
- (c)** The most environmentally sound process, materials and equipment shall be employed.
- (d)** Project Co shall develop and implement a Material Selection Policy consistent with the BOMA Go Green Plus Program.
- (e)** Project Co shall put programs in place to ensure monitoring, inspection, testing, handling, storage and clean-up as required, for:
  - Carbon Monoxide; Carbon Dioxide;
  - Fuel Storage Tanks;
  - Chemicals (CFCs, Halon, Mercury, PCB's etc.);
  - Hazardous Substance; and
  - VOCs as per 12.3.1(p).
- (f)** For each of 12.3.1(e) above, Project Co must comply with the items in the requirements of the Canadian Environmental Protection Act (CEPA) as well as the National Building and Fire Codes.
- (g)** Heating, air conditioning, humidity and mechanical ventilation systems function as intended with the correct circulation rates and air filters installed and maintained.
- (h)** The building will be kept at a temperature consistent with ASHREA 55 including acceptable temperature ranges depending on the season, and 30 to 60% relative humidity, at minimum and maximum design outside ambient conditions, unless altered by change in government policy.
- (i)** Acoustic performance shall conform with Section D3000 of the HMQ Design Requirements.
- (j)** All lighting systems must be fully functional, maintained and perform within ANSI/IES 90.1 levels for courthouse lighting.
- (k)** All cabled infrastructure systems (including communication infrastructure and cabling) must function as intended throughout the contract term.
- (l)** The public address system, courtroom amplification system and radio paging systems function as intended.
- (m)** All power systems are to be regularly maintained, at a level recommended by the manufacturer but not less than recommended by NFPA guidelines, for the maintenance of electrical systems.
- (n)** All UPS and EPGS systems are to be maintained at a level recommended by the manufacturer.
- (o)** All life safety systems must be maintained to meet the requirements of the Ontario Building Code (OBC).
- (p)** Commencing one year after the Completion Date, Project Co shall be responsible for environmental monitoring of TCE levels within the building which consists of collecting soil gas and ambient air samples four times a year, sending them for analysis to approved labs and reporting back to HMQ on the results. Testing for soil gas and ambient air sampling will be completed using the following procedures:

- Using an air sampling pump at each well, purge the air from the riser pipe at each well. Purge approximately 0.25 L of air for each meter length of riser pipe. Collect a soil gas sample from each well using an evacuated 1.7 L SUMMA stainless steel canister prepared by a qualified laboratory and equipped with a flow controller set at 300 ml/min.
  - Collect ambient air samples at three locations inside the courthouse basement and one outdoor onsite location using an evacuated 1.7 L SUMMA stainless steel canister prepared by the qualified laboratory and equipped with a flow controller set at 3 ml/min. The specific sample locations are yet to be determined.
  - Submit the canister samples for the laboratory analysis of VOCs, targeting a detection limit of 1.0 ug/m<sup>3</sup> for TCE. Submit the laboratory certificate of analysis to HMQ for review.
  - Further guidance can be obtained from ASTM D 5314-92 and US EPA *Compendium Method TO-1A*.
  - Conduct the soil gas and ambient air sampling quarterly for one year starting at the one year anniversary of the Completion Date. Subsequent sampling after this second anniversary of Completion shall be conducted at an annual basis unless directed otherwise by HMQ.
- (q) Project Co will conduct a thermal scan of the building every 5 years.
- (r) Project Co shall report on a monthly basis that the above activities were carried out according to the required Service Standards.

### 12.3.2 Waste Management

- (a) Provide a waste segregation and collection service as per specification. Project Co must empty all refuse containers daily and such that they do not achieve more than 75% capacity.
- (b) Comply with all Environmental Protection Act (Ontario) requirements for the handling of waste, EPA Part V (Waste Management), EPA Part X (Spills) and Regulation 347 (General Waste Management).
- (c) Collect, segregate and track waste stream volumes in accordance with HMQ policies and the requirements of the Governmental Authorities, including but not limited to:
- Implementing security procedures to ensure that confidential waste is collected and disposed of in an appropriate manner (i.e. shredded).
  - Tying garbage bags securely and storing these and other waste in the appropriate receptacle and in the designated area prior to collection by Project Co.
  - Segregating selected items of garbage in appropriate secured/labeled containers prior to transport to the central waste storage area.

- (d) Segregate waste for recycling (at source, where possible), including:
  - Waste paper;
  - Cardboard;
  - Laser cartridges;
  - Glass;
  - Tin;
  - Plastic;
  - Newsprint;
  - Batteries;
  - Deposit containers;
  - Kitchen fat;
  - Scrap metal;
  - Styrofoam cups and plates; and
  - Aluminum cans.
- (e) Ensure that waste storage areas, both internal and external shall be:
  - Segregated;
  - Kept clean, free from loose litter, malodour, spillages and debris;
  - Free from pests and vermin;
  - Secure and with access restricted to authorized personnel only; and
  - Stored to minimize the risk of fire.
- (f) Manage and provide the collection of all waste streams to the building loading docks for off-site disposal/tippage/incineration by the HMQ approved contractor.

### **12.3.3 Pest Management**

- (a) Provide a comprehensive Scheduled Maintenance, reactive and on-call (out-of-hours) pest control service, using personnel who are fully trained, qualified and able to provide high quality professional and practical advice. Types of pests to be controlled shall include, but not be limited to insects, rodents and birds.
- (b) Provide emergency pest control advice and services to HMQ via an on-call emergency service outside of normal working hours for dealing with non-routine, urgent and Emergency requests.
- (c) Undertake all work in a safe and cost effective manner which maximizes availability of HMQ resources and reduces to an absolute minimum the risk in terms of safety, food hygiene, infection control, damage to the building and site, etc. from pest infestation.
- (d) Provide safe, efficient and environmentally sound methods of catching, destroying and safely disposing of pests (adopting safe and humane procedures in all instances). Project Co shall ensure all insect and rodent control systems shall be tamper resistant.

### **12.3.4 Mould Management**

- (a) Project Co shall take all required steps to prevent formation of mould by controlling moisture within the building, including but not limited to:

- Inspection of all windows and doors for water penetration from any source, inside or outside the building.
- Treatment of carpets with mould resistant chemicals.
- Operation of chillers during summer months to help dehumidify air.
- Frequent inspections of most vulnerable areas of the HVAC system and buildings to spot any leaks before they occur.
- Procedures to stem leaks or floods and completely dry the affected area within 24 to 48 hours.
- Institution of a water episode log to monitor leaks and document actions taken to repair all associated damage.
- Institution of a mould management program, consistent with Ontario Realty Corporation's Mould Management protocol, to guide HMQ and Project Co Staff in appropriate actions to be taken when mould contamination is discovered.

### **12.3.5 General**

- (a) Ensure that a full audit trail of all activity involved in operating and managing the service is implemented and adhered to at all time. The audit trail shall be agreed in advance with HMQ management and must be available for HMQ inspection.
- (b) Adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every six Contract Months, Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.
- (c) Following the completion of the user instructions, ensure MAG Occupants, Non-MAG Occupants and Project Co Staff are familiar with these Environmental Services instructions.

## 12.4 Quality Monitoring

**12.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Environmental Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed between Project Co and HMQ.

**12.4.2** As part of the BOMA Go Green Plus Program implementation, Project Co will conduct an energy audit and a water audit every three years based on the BOMA Go Green Comprehensive requirements and submit it to HMQ. Included under this requirement is the support to HMQ to provide the necessary reporting to enable the implementation of the various provisions included in Schedule M (Energy Matters) of the Project Agreement.

**12.4.3** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

## 12.5 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
12.5.1 Building Environment	Program in place as per 12.3.1	High	Monthly	Report
12.5.2 Performance to Standard - Waste Management	Waste Management as per 12.3.2.	Medium	Monthly	Random audit
12.5.3 Performance to Standard - Pest Management	Management of Pests as per 12.3.3	Medium	Monthly	Random audit
12.5.4 Performance to Standard - Mould Management	Mould Management as per 12.3.4.	Medium	Semi-Annually	Examination of log
12.5.5 Audit Trail	A full audit trail as per 12.3.5	Low	Yearly	Random audit
12.5.6 Policies and Procedures	Operational policies and procedures are adhered to and current as per 12.3.5	Medium	Yearly	Report
12.5.7 Satisfaction Level	A system of recording and acting on customer	Medium	Yearly	Report



	feedback and satisfaction as per 12.4.1			
12.5.8 Quality Assurance	Quality Assurance Program is in place as per 12.4.2	Low	Yearly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## 12.6 MAG Waste Management Program

### 12.6.1 Waste Management

MAG has both a Basic and a “Maximum Green” waste management program. HMQ intends to meet or exceed the Maximum Green waste management program within the Project Facilities..

The Maximum Green program consists of all waste source-separated into the following streams:

<b>Material</b>	<b>Recycling Container</b>	<b>Procedure</b>
Mixed Office paper	Green Metal Bin	Central bin emptied by janitorial  Janitorial empties these bins for Judges, Justices of the Peace and Crown Attorneys
	Green Desktop Papersaver	Desktop bin emptied, as applicable, by MAG Occupants (other than Judges, Justices of the Peace and Crown Attorneys) or Non-MAG Occupants
	Green Slotted Bin	Under-desk bin emptied by MAG Occupants (other than Judges, Justices of the Peace and Crown Attorneys) or Non-MAG Occupants
	Green Slotted Bin – Judges, Justices of the Peace and Crown Attorneys only	Under-desk bin emptied by janitorial
Newspaper, Magazine, boxboard	White Metal Bin	Central bin emptied by janitorial
Polystyrene (#6 plastic – Styrofoam/clear)	Beige Metal Bin	Central bin emptied by janitorial. Note: This material is not recyclable in all locations
Aluminum and steel cans; #1 and #2 plastic bottles	Blue Box or Tall Blue Bullseye bins	Central bin emptied by janitorial

Corrugated Cardboard	Designated Recycling Location	Boxes must be flattened for external collection by janitorial
Food Waste (where feasible)	Brown or Green container hanging on Beige Poly Bin	Central bin emptied daily by janitorial
Wood Skids	Designated Recycling Location	Piled neatly by janitorial
Garbage	Black Metal Bin  Mini Black Desktop Bin  Executive Garbage Bin	Central bin emptied daily by janitorial Desktop bin emptied by tenants  Janitorial empties these bins for Judges, Justices of the Peace and Crown Attorneys.

For the Maximum Green recycling program, occupants do not have desk-side garbage bins. Tenants who choose to keep the standard garbage bin are responsible for supplying their own garbage bags and emptying these containers themselves. Project Co will not empty these containers.

Materials emptied on behalf of the Judges, Justices of the Peace and Crown Attorneys must be placed in the appropriate liners e.g. clear bags for recyclables and black bags for garbage. The materials must not be mixed or thrown in the garbage.

It is expected that Project Co shall provide all the necessary materials and supplies for waste management. Garbage and recycling containers are to be placed in convenient locations on each floor.

### 12.6.2 Confidential Shredding

A secure locked room for storage of material to be shredded is required. All confidential material shall be handled as follows:

Confidential Material	Secure Locked Bin	Procedure
Office paper, hard and soft cover books	Green Flat-Top Locked Metal Bin	Bin keys must be kept in a secure location
	White Polypropylene Bags	Bag is secured with a cable tie once removed from the locked bin

Confidential shredding bins are to be located in convenient locations on each floor throughout the Project Facilities and shall be locked at all times. These bins shall be checked a minimum of twice per week by Project Co. The bags, when full (approx 50 lbs.) are secured immediately with a cable tie, replaced with a new polypropylene bag

and the bin is re-locked. At this time, the recording sheets are completed indicating the quantity of bags collected from each area. The secured bags are then transported immediately to the designated secure area and are not to be left unattended during transportation at any time. It shall be the responsibility of Project Co to keep the secure room locked and free of debris. Project Co shall be responsible for submitting collection logs to the HMQ at the end of each month.

It is expected that Project Co shall provide all the necessary materials and supplies for confidential shredding.

### **12.6.3 Environmental Protection**

Project Co shall perform the services in a careful and environmentally responsible manner to minimize effects on the environment while at the same time ensuring optimum quality of the services and maximum safety to occupants and in doing so shall:

- a) Employ most environmentally sound processes, materials and equipment;
- b) Water conservation: detect and report any water system leaks such as those through piping, valves, fittings, joints and gaskets etc.
- c) Avoid wastage through proper handling and use of cleaning materials
- d) Participate in the waste management program in place for the Project Facilities by reporting contamination of recyclable materials to HMQ;
- e) Report detection of any Hazardous Substance to HMQ
- f) Follow energy conservation practices by turning off lights (where feasible) when janitorial work routines are completed at the end of the evening

Project Co shall supply paper products required for the services (i.e. paper towels, toilet tissue) containing at least 50% recycled fibre. Samples of such products, together with manufacturer's data indicating percentage content of recycled fibre are to be submitted to HMQ.

Project Co shall use environmentally friendly products to minimize impact on the environment wherever possible in performing the services.

### **12.6.4 Hazardous Substance**

All Hazardous Substance disposal or recycling is handled primarily by Project Co. In certain areas of the Project Facilities, there may be a separate designated storage area of Hazardous Substance to which janitorial staff may have access. In unmanned areas, the Hazardous Substance (e.g. waste paint or fluorescent tubes) shall be stockpiled for disposal by Project Co. At all times in each location, HMQ must be advised of the presence of Hazardous Substance.

### **12.6.5 Records Management**

Material Safety Data Sheets (MSDS) must be kept onsite and these sheets shall be updated according to WHMIS procedures and available for review by HMQ. Confidential shredding logs are to be submitted monthly to HMQ. Monthly reports outlining total weights (by metric tone) of solid waste and recyclable materials collected at the site shall be submitted to HMQ.

## **13 SPECIAL PROJECTS SERVICES**

The function of Project Co, in this Service Category is to perform Special Projects Services for building and site improvement projects planned and funded by HMQ. This service relates to “out of scope” projects only and does not diminish the responsibility of Project Co for the performance of all “in scope”, life-cycle related project work. Article 14 of the Agreement sets out the process for services under this Service Category. This Section covers additional information pertaining to Special Project Services requirements, however, the provisions of the Agreement take precedent over the Specifications of this Service Category.

### **13.1 Requirements**

The Special Projects Services include:

- 13.1.1** Special Projects Services as may be required to meet the level of Service Standards set out in this section and to achieve the following objectives:
  - (a)** Ensure that they do not cause or create any safety or project-related hazard to any person in the building or on the Site, and to minimize disruption to Courthouse Activities.
  - (b)** Ensure Service Standards are achieved through provision of a flexible Special Projects Services team with a culture that incorporates continuous development and innovation relating to changes in HMQ’s needs, together with equipment, effective management systems, clear performance targets and appropriate levels of monitoring.
- 13.1.2** Preparing a periodic monitoring report in accordance with relevant aspects of this Service Category
- 13.1.3** Ensuring that all requisitions for Special Projects Services may be completed electronically via the Help Desk.

### **13.2 Scope of Services**

Special Projects Services consist of the following elements:

- (a)** Internal & External Project Management;
- (b)** Supervision of contractors and sub-contractors; and
- (c)** Quality Monitoring.

### **13.3 Service Requirements**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with a customer service philosophy, relative to Special Projects Services prior to commencement of service which shall include, but not be limited to:

- 13.3.1** Project Co shall ensure effective project delivery including management of change, contingencies and disputes.
- 13.3.2** Work completed under these conditions will be subject to the provisions of the Construction Lien Act, R.S.O., c.C. 30, as amended, or any successor act and other Applicable Law.
- 13.3.3** Upon completion of an item of “public work”, on behalf of HMQ, Project Co shall provide:
  - (a) A clearance certificate issued by the Workplace Safety and Insurance Board pursuant to the Workplace Safety and Insurance Act, 1997, S.O. 1997, c 16;
  - (b) An HMQ Statutory Declaration form, duly completed and notarized;
  - (c) Evidence that title to the Premises is free of any liens; and
  - (d) All necessary record drawings, manuals, warranties or other documentation deemed necessary by HMQ.
- 13.3.4** In undertaking Special Project Services responsibilities, Project Co shall, at all times, comply with all Applicable Law and BOMA Go Green Plus Program requirements including, without limitation:
  - (a) The current Class Environmental Assessment Process for ORC Realty Activities (the “Class EA Requirements”), as amended from time to time;
  - (b) The Ontarians With Disabilities Act;
  - (c) The Fairness Is A Two-Way Street Act (Construction Labour Mobility), 1999, S.O. 1999, c.4 as amended from time to time; and
  - (d) BOMA Go Green Plus Program, more specifically having in place a construction waste policy with a minimum of 75% of Construction, Demolition and Renovation (CD&R) waste from landfill or incineration. Project Co shall also develop and implement a Material Selection Policy consistent with the BOMA Go Green Plus Program.

**13.4 Quality Monitoring**

- 13.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Special Projects Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed between Project Co and HMQ.
- 13.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

**13.5 Service Standards**

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
13.5.1 Performance to	Projects managed as per 13.3.1.	Medium	Yearly	Report

Standard				
13.5.2 Regulatory Compliance	All government policies, regulations and procedures are complied with as per 13.3.2, 13.3.3 and 13.3.4.	Low	Yearly	Report
13.5.3 Satisfaction Level	A system of recording and acting on customer feedback as per 13.4.1	Medium	Yearly	Annual occupant satisfaction survey
13.5.4 Quality Assurance	Quality Assurance Program is in place as per 13.4.2	Low	Yearly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.



## **14 LIFE CYCLE RENEWAL SERVICES**

The function of Project Co in this Service Category is to ensure the ongoing viability and operational serviceability of the Project Facilities through a comprehensive, integrated and continuous replacement and renewal program over time. In providing this service, Project Co will minimize the impact on Courthouse Activities.

### **14.1 Requirements**

**14.1.1** Project Co will, as an inherent condition, accept the Project Facilities operational risk. Thus, Project Co is responsible to renew the Project Facilities, as required, such that, at termination or expiry of the Agreement, the Project Facilities are a fully functional going concern as specified in the Handback Requirements specified in Schedule E, Part II of the Agreement. The frequency for replacing FM Components or systems will be based on the Schedule of Replacement Life Cycles contained in Section 14.6.

**14.1.2** Where FM Components and systems, in addition to those in place at Completion Date (i.e. outside the scope of the Agreement), are required and provided by HMQ, Project Co will provide operational and cost impact information to HMQ as well as professional advice and guidance, as required, as to life-cycle replacement or renewal requirements. Furthermore Project Co will work closely with HMQ to evaluate FM Components and systems under consideration and incorporate information on these FM Components and subsystems in the Asset Register.

The Life Cycle Renewal Services include:

- (a)** Development and maintenance of an auditable quality Life Cycle Renewal Plan which is representative of the services being provided and reflects the requirements of HMQ.
- (b)** Provision of high quality, efficient, innovative and flexible Life Cycle Renewal Services at all times.
- (c)** Establishment and maintenance of an Asset Register on a continuous basis.
- (d)** Replacement or renewal services that minimize disruption to Courthouse Activities. Replacement must be in accordance with the Schedule of Replacement Life Cycles contained in Section 14.6 and any extensions agreed upon with HMQ relative to the Effective Age
- (e)** Preparation of a periodic monitoring report in accordance with relevant aspects of this Service Category as well as the Annual Life Cycle Renewal Plan and Five Year Life Cycle Renewal Report on each fifth year anniversary of the Completion Date.
- (f)** Life Cycle Renewal Services that are consistent with the HMQ Design Requirements as to ensuring the sustainability of the building environment that is consistent with the BOMA Go Green Plus Program [and if proposed by the Proponent, with the LEED EB designation and CSA standards].

- (g) Reasonable and competent supervision of the work at all times and of all Project Co Staff performing services under this Service Category.

## **14.2 Scope of Services**

Life Cycle Renewal Services consist of the following elements:

- (a) Exhaustive review, acceptance, inventory and costing of Project Facilities as per the Section 14.6 - Schedule of Replacement Life Cycles
- (b) Detailed Life-Cycle Renewal Services for in-scope elements;
- (c) Advice, guidance and recommendations on Life Cycle Renewal and/or replacement of out-of-scope project additions to Project Facilities subsequent to Project Facilities commissioning;
- (d) Maintenance of the Project Facilities consistent with the Schedule of Replacement Life Cycles and the Handback Requirements; and
- (e) Reporting and Quality Monitoring.

## **14.3 Service Requirements**

Prior to the Completion Date Project Co shall develop and implement appropriate operational policies, procedures and practices, relative to Life Cycle Renewal Services which shall include, but not be limited to:

- 14.3.1** Management and operation of an electronic inventory control system, the Asset Register, that provides up-to-date records of all Project Assets including building architectural, mechanical and electrical elements and systems, and integrates with HMQ systems. The system must be designed to enable simple and efficient data input and access to records and to provide data output which is meaningful and to produce Asset Activity Reports on as required basis. The system should also be used to provide part of the audit trail and will be used for quality monitoring. The Asset Register covers in-scope and out-of-scope Equipment and Systems as well as MAG FF&E. On a monthly basis Project Co shall produce a report related to the periodic changes in the Asset Register (additions, movement and transfer, disposal and removal, etc.) titled Asset Activity Report.
- 14.3.2** On going maintenance of a comprehensive Life Cycle Renewal Plan for all critical building architectural, mechanical and electrical elements and systems. The Plan should be prepared on annual basis and submitted to HMQ.
- 14.3.3** Initiation of an emergency procurement vehicle to enable timely replacement response in the event of unexpected elements failure.
- 14.3.4** The Life Cycle Renewal Services shall:
  - (a) Minimize disruption to Courthouse Activities;
  - (b) Store material in accordance with manufacturer's recommendations and CSA standards as may be amended from time-to-time;
  - (c) Regularly review inventory items according to the Life Cycle Renewal Plan; and
  - (d) Ensure timely replacement of FM Components at designated end-of-useful-life dates as indicated in the Schedule of Replacement Life Cycles;

- (e) Ensure that FM Component replacements are of equivalent or superior standard to take into account technological advancements; and
  - (f) Take into account Normal Wear and Tear of the Project Assets, Equipment and Systems to ensure consistency with industry standards and intended use in the Elements.
- 14.3.5** Replacement of FM Components, Equipment and Systems must be consistent with the following principles:
- (a) Selection of FM Components in accordance with the approved Schedule Replacement Life Cycles that meets or exceeds the Service Standards as specified in this Section and in any event at a rate that meets or exceeds the rate of the actual physical depreciation of the FM Component and subject to the following criteria:
    - Where the Effective Age of the FM Component, as assessed by the Independent Inspector, is less than its Physical Age then replacement of the FM Component may be deferred, but in any event the effective age shall not exceed the stated life cycle in the Schedule of Replacement Life Cycles
    - Where the Effective Age of the FM Component as assessed by the Independent Inspector is greater than its Physical Age then the FM Component shall be replaced prior to the stated life cycle in the Schedule of Replacement Life Cycles.
  - (b) Replacement of FM Components with Replacement FM Components that reproduce the FM Component replaced in form, substance and quality and meet or exceed the specifications.
  - (c) Replacement of FM Components of equivalent duration unless authorized otherwise by HMQ.
  - (d) Where FM Components are no longer available or those FM Components cannot be reproduced then FM Components may be replaced with Replacement FM Components of similar or equivalent form, substance and quality that meet or exceed the Service Standard.
  - (e) Replacement of FM Components including all required materials, systems and equipment shall be new. Replacement of FM Components with used or reconditioned material, systems and equipment is not allowed unless approved by HMQ and subject to any provision in the Project Agreement for possible gain sharing.
- 14.3.6** Store and handle inventory items so the state of repair is not compromised.
- 14.3.7** Through a formal arrangement with its Plant Services, Project Co must ensure complete integration, including information feedback protocols, of the Life Cycle Renewal Plan and the Scheduled and Demand Maintenance plans.
- 14.3.8** Where new or alternative building and site equipment or systems are provided by HMQ, life-cycle replacement will be the responsibility of HMQ. However, Project Co will be responsible to provide professional counsel and recommendations on such renewal and/or replacement.
- 14.3.9** Where new or alternative building and site equipment or systems are provided by HMQ, Project Co will report on the impact of such additions or alternatives on existing systems or operational costs.

- 14.3.10** Implementation of a full audit trail of activity and adherence to agreed standards.
- 14.3.11** Full acceptance of and adherence to provisions of the DCC Handback Specifications.
- 14.3.12** Provision of periodic management reports to HMQ such as:
- (a)** Monthly reporting on the Asset Register Updates;
  - (b)** Annual Reporting as follows:
    - Life Cycle Renewal Plan describing the activities that are planned for the year;
    - Annual Life Cycle Renewal Equipment and System Serviceability Report, detailing the activities that took place during the year in relation to the stated plan;
    - Inspection reports by Project Co or Independent Inspector of the equipment, systems and FM Components during the year with the action plan for each.
  - (c)** Every five years a Facility Condition Assessment done by a third party Independent Inspector;
  - (d)** Ad-hoc report on the following topics:
    - Advice to HMQ on systems and equipment that are out-of scope
  - (e)** Other reports as agreed upon between Project Co and HMQ.

#### **14.4 Quality Monitoring**

- 14.4.1** Project Co and HMQ shall conduct an annual review of the Life Cycle Renewal Equipment and Systems Serviceability Reports, FM Components replacements over the past year and plans for the coming year. Deficiencies, based on Project Facilities performance data shall be remedied by Project Co within eight weeks of the review.
- 14.4.2** Project Co shall institute an inspection process for regular testing of the Equipment and Systems, the results of such inspection are to be provided to HMQ and the Independent Inspector in order to assess the rate of physical depreciation of the FM Components and any functional obsolescence.
- 14.4.3** Every five years, during Agreement Term, a third party will be commissioned to assess the condition and ongoing serviceability of Project Facilities and future life expectancy. The third party, the Independent Inspector, shall be jointly selected by Project Co and HMQ. The third party should be a firm or a group of firms who are qualified to conduct such activity and have the professional credentials. The assessment should take into consideration the Scheduled and Demand Maintenance activities, repairs and replacement of FM Components and the overall condition of the Project Assets, noting any deficiencies and needed corrective actions. The third party assessor may also be the same party who will be involved in the Handback Requirements in order to ensure continuity. The Independent Inspector shall be qualified to conduct the requisite work and shall not be involved in providing services to Project Co or HMQ in connection with the Project Facilities. The competency of the resources will depend on the subject matter but should not be less than 5 years of relevant direct experience in evaluating, inspecting and reviewing relevant systems, equipment and their maintenance and repairs record in order to assess their physical and effective age.

**14.4.4** As part of the BOMA Go Green Plus Program implementation, Project Co will conduct an energy audit and a water audit every 3 years based on the BOMA Go Green Comprehensive requirements and submit it to HMQ. Included under this requirement is the support to HMQ to provide the necessary reporting to enable the implementation of the various provisions included in Schedule M (Energy Matters) of the Project Agreement.

**14.5 Service Standards**

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
14.5.1 Inventory	Asset Activity Report as per 14.3.1	Low	Monthly	Report
14.5.2 Performance to Standard – Renewal Services	Life Cycle Renewal Services provided as per 14.3.5, 14.3.6, 14.3.7, 14.3.8, 14.3.9, 14.3.10	High	Monthly	Report
14.5.2 Life Cycle Plan	Life Cycle Renewal Plans as per 14.3.4	Medium	Yearly	Report
14.5.4 Serviceability Reports	Equipment and Systems Serviceability reports presented and reviewed with HMQ as per 14.4.1	Medium	Yearly	Report
14.5.5 Satisfaction Level	System of recording and acting on HMQ feedback regarding 14.5.6 is in place and functioning to the satisfaction of HMQ.	Medium	Yearly	Random audit
14.5.6 Audit Trail	Audit trail is provided as per 14.3.11	Low	Yearly	Random audit
14.5.7 Facility Condition Assessment	Independent assessment of facility, Equipment and Systems condition and serviceability according to 14.4.3	High	Every Five Years	Report

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## 14.6 Schedule of Replacement Life Cycles

<b>FM Component</b>	<b>Life Cycles</b>	<b>Proposed by Project Co</b>
<b>Structure</b>		
Substructure - concrete foundations	110	[REDACTED]
Frame – Concrete	80	[REDACTED]
Upper Floors - Concrete	80	[REDACTED]
<b>Roof</b>		
Structure - Concrete	80	[REDACTED]
Metal standing seam roofing	45	-
Flat coverings - asphalt	35	-
Flat coverings – 2 ply bitumen	25	[REDACTED]
<b>Stairs</b>		
Stairs - concrete	75	[REDACTED]
Structure - concrete	80	[REDACTED]
Ballastrading	60	[REDACTED]
Finishing (included with floor, wall and ceiling finishes)		
<b>External Walls</b>		
Cladding (zinc)	50	-
Cladding (steel)	35	-
Brick or block walls	85	[REDACTED]
Glazed curtain walling	45	[REDACTED]
<b>Windows &amp; External Doors</b>		
Windows and external doors	45	-
Aluminium glazed windows and external doors	45	-
<b>Internal Partitions</b>		
Blockwork partitions	60	[REDACTED]
Drywall partitions	40	[REDACTED]
<b>Internal Doors</b>		
Softwood Doors & Frames	40	[REDACTED]
Hardware	40	[REDACTED]
Steel Doors & Frames	40	[REDACTED]
<b>Wall Finishes</b>		

<b>FM Component</b>	<b>Life Cycles</b>	<b>Proposed by Project Co</b>
Plaster	40	[REDACTED]
Drywall ( excludes prison areas)	40	[REDACTED]
Decorations (paints & vinyl wall covering)	7	[REDACTED]
Seamless wall finishes	20	[REDACTED]
Ceramic Tiles	35	[REDACTED]
Curtain Wall Blasts	15	[REDACTED]
<b>Floor Finishes</b>		
Terrazzo	50	[REDACTED]
Carpet & Carpet tiles - general areas	15	[REDACTED]
Carpet & Carpet tiles - circulation areas	15	[REDACTED]
Seamless flooring - general areas	20	[REDACTED]
Seamless flooring - circulation areas	20	[REDACTED]
Ceramic floor tiling	35	[REDACTED]
Wall bases - general areas - wood bases	50	[REDACTED]
Wall bases - circulation areas - wood bases	50	[REDACTED]
<b>Ceiling Finishes</b>		
Mineral fibre tiles to suspended ceilings	25	[REDACTED]
Seamless ceiling finishes	25	[REDACTED]
Kitchen ceilings	20	[REDACTED]
Drywall	40	[REDACTED]
Paint finish to drywall	7	[REDACTED]
Fixed fittings and millwork	20	[REDACTED]
<b>Sanitary Installations</b>		
Parts of Appliances	50	[REDACTED]
Appliances generally	50	[REDACTED]
Waste & overflow pipework	50	[REDACTED]
<b>Below slab drainage</b>		
Generally	100	[REDACTED]
<b>External Work</b>		
Drainage	75	[REDACTED]
Hard landscaping	25	[REDACTED]
Soft landscaping	30	[REDACTED]
<b>Mechanical &amp; Electrical Systems</b>		
1. LHPW and Steam		
1A Boiler Plan		
Boilers	30	[REDACTED]
Burners	21	[REDACTED]
Pressurization unit	-	-

<b>FM Component</b>	<b>Life Cycles</b>	<b>Proposed by Project Co</b>
Chimney	40	[REDACTED]
Deaerator	25	[REDACTED]
Feedwater pump	20	[REDACTED]
Chemical treatment	15	[REDACTED]
Condensate Tank	25	[REDACTED]
Pressure regulating valve	15	[REDACTED]
Expansion joints	15	[REDACTED]
Steam traps	15	[REDACTED]
1B Pumps		
End Suction (floor mounted)	20	[REDACTED]
In-line (pipe mounted)	10	[REDACTED]
1C Heat Emitters		
Radiators	25	[REDACTED]
Convectors/radiants etc. to hospital, streets etc	25	[REDACTED]
1D Pipework & Valves		
Pipework & supports	40	[REDACTED]
Cast iron valves	30	[REDACTED]
Bronze valves	20	[REDACTED]
Thermostatic radiator valves	10	[REDACTED]
Lockshield radiator valves	20	[REDACTED]
1E Thermal Insulation	20	[REDACTED]
<b>2. Chilled Waters</b>		
<b>2A Water Chilled Plant</b>		
Chemical treatment	15	[REDACTED]
Water chillers	23	[REDACTED]
Pressurized unit	-	-
Bullet storage unit	30	[REDACTED]
Cooling tower	20	[REDACTED]
2B Pumps		
End Suction (floor mounted)	20	[REDACTED]
In-line (pipe mounted)	10	[REDACTED]
2C Pipework & Valves		
Pipework & supports	40	[REDACTED]
Cast iron valves	30	[REDACTED]
Bronze valves	20	[REDACTED]
2D Thermal Insulation	20	[REDACTED]
<b>3. Ventilation Services</b>		
<b>Air Handling Plant</b>		
Air Handling Plant	25	[REDACTED]
Ductwork	30	[REDACTED]
Volume control dampers	20	[REDACTED]
Fire Dampers	20	[REDACTED]



<b>FM Component</b>	<b>Life Cycles</b>	<b>Proposed by Project Co</b>
Smoke Dampers	20	[REDACTED]
Grilles & Diffusers	27	[REDACTED]
Attenuators	30	[REDACTED]
Fan Coil Units	20	[REDACTED]
<b>4. Water Services</b>		
HWS calorifiers	24	[REDACTED]
Storage tanks	30	[REDACTED]
End suction pumps	20	[REDACTED]
Pipe mounted pumps	10	[REDACTED]
Valves	20	[REDACTED]
HWS thermostatic valves	20	[REDACTED]
Booster Plant	20	[REDACTED]
Softener Plant	15	[REDACTED]
Pipework	40	[REDACTED]
Thermal Insulation	24	[REDACTED]
<b>5. Controls</b>	24	[REDACTED]
Computer front end	10	[REDACTED]
BMS Hardware	20	[REDACTED]
Valves and actuators	20	[REDACTED]
Satellite controls	20	[REDACTED]
Commissioning / software engineering	5	[REDACTED]
<b>6. Oil Storage</b>		
Oil storage tanks	20	[REDACTED]
Pumps and valves	15	[REDACTED]
Pipework	30	[REDACTED]
<b>7. External Services</b>		
Gas	30	[REDACTED]
Water	30	[REDACTED]
<b>8. Miscellaneous</b>		
Drainage piping	40	[REDACTED]
Grease traps	25	[REDACTED]
Sump pumps	15	[REDACTED]
<b>9. Electrical Externals / On-costs:</b>		
Lighting to Plant spaces	18	[REDACTED]
Power to Plant spaces	30	[REDACTED]
Lift installations	25	[REDACTED]
Lighting to streets	18	[REDACTED]
Utility power to streets	35	[REDACTED]

<b>FM Component</b>	<b>Life Cycles</b>	<b>Proposed by Project Co</b>
HV Switchgear	35	[REDACTED]
Transformers	35	[REDACTED]
HV Cabling	35	[REDACTED]
LV Switch panels - ACB's	35	[REDACTED]
LV Switch panels - molded case	25	[REDACTED]
LV Cabling	35	[REDACTED]
Generators	25	[REDACTED]
Plant control wiring	25	[REDACTED]
Lighting protection	35	[REDACTED]
External Lighting	18	[REDACTED]
Fire alarm system panels	18	[REDACTED]
Fire alarm system wiring	18	[REDACTED]
Fire detection to Plant areas	18	[REDACTED]
Fire detection to streets	18	[REDACTED]
Staff location systems	18	[REDACTED]
Data distribution - hubs	5	[REDACTED]
Data distribution - site cabling	23	[REDACTED]
TV / Radio distribution	13	[REDACTED]
Telephone equipment	13	[REDACTED]
Telephone wiring	13	[REDACTED]
Security Installation	8	[REDACTED]
<b>Program Space Electrical Costs</b>		
Light Fittings	18	[REDACTED]
Lighting system wiring	25	[REDACTED]
Utility Power	35	[REDACTED]
Fire alarm	18	[REDACTED]
Telephone wiring	18	[REDACTED]
Telephone instruments	13	[REDACTED]
Others (to be proposed by [Proponent])		

## **15 FOOD SERVICES**

The function of Project Co in this Service Category is to ensure the availability of a suitable food services operation to respond to the needs of in-custody, MAG occupants, Non-MAG Occupants and Courthouse Service users.

### **15.1 Requirements**

Project Co shall be responsible to for the provision of an area within the Project Facilities, where food will be sold. The Food Service shall be in accordance with HMQ Design Requirements. The composition (menu) and manner in which food is provided, prepared, transported and/or distributed is left to the discretion of Project Co. All requisite standards for food handling, together with a quality assurance plan, must be met and provided.

The Food Services include:

- 15.1.1** Provision of quality and nutritional Food Services at all times.
- 15.1.2** Assurance that Service Standards are achieved through provision of a Food Services team relating to MAG Occupants and Non-MAG Occupants' needs, together with effective management systems, clear performance targets and appropriate levels of monitoring including customer satisfaction survey at least once a year as part of the Quality Assurance Program
- 15.1.3** Development and maintenance of an auditable quality Food Services Plan which is representative of the services being provided and reflects the requirements of MAG.
- 15.1.4** Reasonable and competent supervision of the work at all times and of all Project Co Staff performing services under this Agreement.
- 15.1.5** Development and implementation of a Material Selection Policy consistent with the BOMA Go Green Plus Program.

### **15.2 Scope of Services**

Food Services consist of the following elements:

- (a)** Preparation and selling of food and beverages;
- (b)** Provision of food consumption area (s); and
- (c)** Quality Monitoring.

Food Services do not include:

- (a) Hosting of special events outside the building such as barbeques, unless agreed upon by HMQ;
- (b) Selling and consuming of alcohol; and
- (c) Catering to external users unless agreed upon by HMQ.

### **15.3 Service Requirements**

**15.3.1** Project Co shall prepare a comprehensive Food Services operating plan outlining its intended scope of service, method of provision and quality assurance vehicle, while meeting the minimum requirements outlined below, which plan shall be consistent with the Food Services operating plan included in Project Co's RFP-2 proposal. Such plan shall be updated during the Initial Operational Phase and each month after the Completion Date and shall be in form and substance satisfactory to HMQ.

**15.3.2** Project Co shall be responsible for the provision of Food Services equipment, fixtures and furniture and their repair and replacement as needed. Also, in case a franchise type operation is proposed, Project Co will ensure that all dealings with the franchisor(s) are conducted in a professional manner, consistent with the dignity of the courthouse.

**15.3.3** Project Co shall, for its own or its consignee's use, develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to Food Services prior to commencement of Service which shall include, but not be limited to:

- (a) A cafeteria-style food service during normal courthouse working hours (8:00 AM to 5:00 PM) including take-out service, seating a minimum of 140 people and meals and refreshment service for business meetings and events. The emphasis is to be on prompt service so as not to delay court or employees in returning to work and provide for a safe and pleasant eating environment (e.g., safe utensils, cups, plates). The service must provide a variety of quick, fresh and healthy menu items (e.g. soup, salad, sandwiches, wraps, fruit, muffins, cookies, pie), refreshments (e.g. coffee, tea, juice, milk, water), and entrées (e.g. pasta, stir-fry).
- (b) A range of vended snacks and beverages, available at all times. All items shall be within the sell-by date.
- (c) The food may be prepared on-site or off-site. Appropriate kitchen equipment and ventilation must be installed at the vendor's expense. Food-related odours may not be present in the rest of the facility.
- (d) The menu should not be over-represented by any particular cuisine and while providing a variety of food items it should not provide too many short order choices requiring preparation time that could contribute to delays and line-ups. The proposed seating area should not include table service and must allow employees and the general public to use the space to consume food brought in

from the outside. Project Co is encouraged to provide menus and delivery service to the judiciary within the courthouse.

- (e) The location of the Food Services within the facility is important to provide easy customer access without having to exit the security station. If Project Co is interested in serving non-courthouse customers from the street, it must provide for a fully separate access without compromising courthouse security. This separation must be approved by MAG and the Durham Regional Police Service.
- (f) Permit access to the retail facility by those judiciary and MAG staff that chooses to consume their own food in this area. Menus and pricing must be clearly displayed at all times.
- (g) Ensure the availability of accessible and adequate space to accommodate the expected concentration of traffic.
- (h) Ensure all standards of cleanliness are met and that tables are kept neatly arranged.
- (i) Pricing is to be in line with street pricing.
- (j) At a minimum, and only when requested, provide a catering service for the judiciary, regional police and/or MAG staff, which shall include the following:
  - Beverage service to meetings;
  - Working Meal service; and
  - Catering for functions.

The expected volumes are estimated as follows:

- An average of 100 meals per month to deliberating jury members; and
- An average of 15 meals and refreshments per month for business meetings and events.

**15.3.4** Project Co may, at its discretion, and subject to submission of a detailed operating plan that includes provisions for access, security of staff and public, and associated quality assurance, provide optional food services that may include:

- (a) Project Co would be permitted to operate food services outside of the normal courthouse working hours (8:00 am to 5:00 pm), including evening and weekend services and to provide catering services external to the building as long as security considerations are addressed in advance with HMQ and the Durham Regional Police Services. This could consist of but not be limited to:
  - Providing and supplying vending services in the Project Facilities. If such is the case, care must be exercised to ensure:
    - Vending machines/areas are unobtrusive and, where possible, integrated into the overall building design. The location of vending machines shall be agreed upon with HMQ prior to installation. Vending areas should be located to provide a full vending service and be easily accessible from public areas;
    - Procurement, installation, commissioning, maintenance and cleanliness of vending machines according to manufacturer's instructions and any other ancillary equipment required, for meeting the out-of-hours services. Equipment used for reheating shall be protected against misuse (e.g. microwaves);

- All vending areas have garbage cans and all vending areas are kept clean and tidy at all times;
  - A provision of ingredient lists of vended goods upon request of customers or HMQ;
  - Vending prices are clearly displayed and should reflect street pricing; and
  - A clearly displayed telephone contact number for vending machine users to report faults or low stocks. All user complaints shall be the responsibility of Project Co.
- (b) The Durham Regional Police Service has expressed interest in an on-site food service to feed the In Custody persons while in Police custody at the courthouse. Project Co must enter an agreement with the police service that is separate and apart from the overall courthouse contract. It is estimated that an average of 1,200 meals per month will be required for in-custody clients.
- (c) Project Co and all Project Co Staff shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every six Contract Months Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.
- (d) A full audit trail of activity is implemented and adheres to agreed standards.

#### **15.4 Quality Monitoring**

- 15.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Food Services. A customer user satisfaction survey/questionnaire will be carried out quarterly.
- 15.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.
- 15.4.3** Project Co shall provide a customer-focused menu development service, based on periodic surveys, that actively takes account of staff and visitor feedback regarding the:
- (a) Range of services on offer;
  - (b) Choice of meals, snacks and drinks and portion size;
  - (c) Quality of services; and
  - (d) Accessibility of service.

## 15.5 Service Standards

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
15.5.1 Operating Plan	Food Services operating plan in place as per 15.3.1	High	Yearly	Review plan
15.5.2 Policies and Procedures	General operational policies, practices and procedures are in place, current and adhered to as per 15.3.3.	Medium	Yearly	Report
15.5.3 Availability	The Food Services is available and provides services as per 15.3.3	Medium	Monthly	Random audit
15.5.3 Inventory	A range of vended snacks and beverages is available as per 15.3.3	Low	Monthly	Random audit
15.5.4 Menus and Pricing	A portfolio of catering menus and current prices is available as per 15.3.3	Low	Per Request	Random audit
15.5.4 Optional Services	If optional Food Services are provided, operating plans in place as per 15.3.4	Low	Monthly	Review plan
15.5.5 Satisfaction Level	Customer satisfaction surveys conducted on a yearly basis as per 15.4.1	Medium	Yearly	Report
15.5.5 Menu Development	A system for recording and acting on customer feedback and satisfaction as per 15.4.3	Low	Yearly	Random audit
15.5.6 Audit Trail	A full audit trail of activity is implemented as per 15.3.4	Low	Yearly	Random audit
15.5.7 Quality Assurance	Quality Assurance Program as per 15.4.2	Low	Yearly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **16 PARKING SERVICES**

The function of Project Co in this Service Category is to ensure the availability of suitable Parking Services operations to respond to the needs of the judiciary and selected MAG staff.

### **16.1 Requirements**

Project Co will be responsible for the delivery of Parking Services for the DCC. These services include but are not limited to:

- 16.1.1** Provision of Parking Services 24 hours per day, 365(6) days per year on a planned and ad-hoc basis as may be required to meet the requirements of HMQ. Project Co shall:
  - (a)** Provide a secure and safe underground car parking environment for judiciary.
  - (b)** Provide traffic management across the site to ensure the free flow of traffic ensuring access to the Project Facilities at all times
- 16.1.2** Project Co shall prepare a periodic monitoring report detailing ongoing performance to HMQ.
- 16.1.3** Project Co shall exercise competent supervision of the work at all times.
- 16.1.4** Project Co shall ensure that all requisitions related to Parking Services may be completed electronically via the Help Desk.

### **16.2 Scope of Services**

Parking Services consist of the following elements:

- (a)** Provision of covered parking for the judiciary;
- (b)** Provision of parking and traffic management;
- (c)** Parking administration & management; and
- (d)** Quality Monitoring.

### **16.3 Service Requirements**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with a customer service philosophy, relative to Parking Services prior to commencement of services which shall include, but not limited to:

- (a)** Project Co shall provide parking which must be clearly signed for the judiciary covered parking and other parties as determined by HMQ
- 16.3.2** In providing the Parking Services, Project Co shall develop and implement appropriate policies, procedures and practices, together with a customer service philosophy, relative to the provision of parking and traffic management prior to commencement of service which shall include, but not be limited to:



- (a) Provide, maintain, operate, and replace when necessary, access and egress equipment, mechanical or otherwise, to ensure parking services are secure and efficiently provided.
- (b) Provide personal security for covered parking.
- (c) Ensure all equipment and machinery are commissioned, operated and maintained in good safe working order (at all times) and in accordance with manufacturer's instructions and requirements.
- (d) Regularly inspect the parking areas and internal roadways and report any damage to the Help Desk promptly and ensure appropriate repairs are taken. Such damage to be repaired includes, but is not limited to:
  - Damaged underground parking or road surface;
  - Curbing and footpaths;
  - Overhanging or obtrusive vegetation;
  - Inadequate street and or car park lighting;
  - Road or space definition markings; and
  - Inadequate or damaged signage.
- (e) Keep all entrances, exits and internal roadways within the Site clear from vehicular and other obstructions thus maintaining free flow of traffic at all times. These responsibilities include but are not limited to:
  - Enforced removal of such obstructions at Project Co's expense;
  - Dealing with customer complaints in accordance with Project Co's complaint's policy; and
  - Acting at all times in courteous and polite manner.

**16.3.3** A full audit trail of activity is implemented and adheres to agreed standards.

**16.3.4** Project Co and all Project Co Staff shall at all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Every six Contract Months, Project Co will provide HMQ's Representative or designate a report detailing where non-adherence has been identified.

## **16.4 Quality Monitoring**

**16.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Parking Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out quarterly.

**16.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

## 16.5 Service Standards

Standard	Measure	Category	Frequency	Monitoring method
16.5.1 Signage and categories	Signage and designation as per 16.3.1	Low	Monthly	Random audit
16.5.2 Availability - Judiciary	The covered parking and personal security services for the judiciary are available as per 16.3.1	High	Monthly	Random audit
16.5.3 Policies and Procedures	Operational policies and procedures in place and current as per 16.3.2	Low	Yearly	Report
16.5.4 Equipment and Machinery	All equipment and machinery maintained as per 16.3.2.	Low	Yearly	Random audit
16.5.5 Damage Reporting	Parking areas and internal roadways are regularly inspected and any damage is reported promptly to the Help Desk as per 16.3.2.	Low	Per Incident	As required
16.5.6 Traffic Management	All entrances, exits and internal roadways within the facility are to be free from vehicular and other obstructions as per 16.2.3.	Medium	Yearly	Random audit
16.5.7 Audit Trail	A full audit trail as per 16.3.3	Low	Yearly	Random audit
16.5.8 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction is in place as per 16.4.1.	Medium	Yearly	Report
16.5.9 Quality Assurance	Quality Assurance Program as per 16.4.2	Low	Yearly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **17 FURNITURE AND OFFICE EQUIPMENT SERVICES**

The function of Project Co in this Service Category is to provide ongoing logistical support (i.e. receipt, logging, transport, storage, moving, arranging for servicing by outside contract and service quality assurance) for furniture, office equipment and spare parts procured or otherwise provided by HMQ or Project Co. Refer to the Agreement (including, MAG FF&E described in Schedule B, Part III and the Cash Allowance Procedure in Schedule B, Part IV) as these shall govern in case of inconsistency.

The services in this section do not apply to Non-MAG Occupants who may make separate arrangements to obtain these services from Project Co at their own cost.

### **17.1 Requirements**

The Furniture and Office Equipment Services include:

- 17.1.1** Furniture and Office Equipment Services on a scheduled and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall achieve the following objectives:
- (a)** Provide high quality, efficient, innovative and flexible Furniture and Office Equipment Services.
  - (b)** Ensure availability of qualified, trained and competent service agents with the skills to deal with both traditional and modern furniture and office equipment systems.
  - (c)** Develop and maintain an auditable quality plan which is representative of the services being provided and reflects the requirements of HMQ.
  - (d)** Provide comprehensive, effective, flexible and efficient Furniture and Office Equipment Services to facilitate efficient Courthouse Activities.
  - (e)** Provide an efficient and cost-effective high quality service for the safe and secure receipt and distribution of all furnishings and equipment to all Spaces and elsewhere throughout the Project Facilities.
  - (f)** Ensure Service Standards are achieved through provision of a flexible Furnishings and Office Equipment Services team with a culture that incorporates continuous development and innovation relating to changes in HMQ's needs, together with equipment, effective management systems, clear performance targets and appropriate levels of monitoring.
- 17.1.2** Reasonable and competent supervision of the work at all times and of all Project Co Staff performing services under this Agreement
- 17.1.3** Preparation of a periodic monitoring report in accordance with relevant aspects of this task as outlined in this Service Category.

### **17.2 Scope of Services**

Furniture and Office Equipment Services consist of the following elements:

- (a)** Receipt and storage of furniture and office equipment;

- (b) Distribution of furniture and office equipment as required;
- (c) Provision of Cleaning Services to FF&E;
- (d) Arrangements, through outside contract, for ongoing serviceability, assurance and maintenance of furniture and office equipment;
- (e) Initiation of Special Projects Services for changes to MAG furniture layout ;
- (f) Provision and operation of an electronic inventory and tracking system for FF&E;
- (g) Quality Monitoring;
- (h) The above services do not cover Non-MAG Occupant FF&E.

**17.2.2** Not included in this Service Category is the provision, by Project Co, through purchase or other mechanism, of FF&E and spare parts. That function will remain vested in HMQ. HMQ may request, from time to time, Project Co to procure on its behalf furniture and equipment by either using existing government arrangements with suppliers or going to market via a request for proposals or tenders. In such cases, Project Co will be allowed to charge HMQ the agreed upon fee for such services.

**17.2.3** HMQ may request Project Co to arrange for service contracts with service agents for maintenance and repair of the FF&E after the expiration of the builder or the Original Equipment Manufacturer's Warranty. Project Co shall arrange for such and charge HMQ for agreed upon administration for the services over and above the cost of the services.

**17.2.4** HMQ may request Project Co to remove and dispose off unserviceable or surplus Furniture, Fixture and Equipment. Project Co shall arrange for such and charge HMQ for these services as per the agreed upon fee (unless such fee is set forth in the Agreement) and remit to HMQ any net proceeds from the disposal of the items (if applicable).

**17.2.5** HMQ may request Project Co to set up a qualified service agent to implement changes to furniture installations in accordance with designs prepared by HMQ and Project Co will recover the costs directly from HMQ in accordance with the Agreement, provided that HMQ shall, in its discretion, have the right to obtain these services independently and Project Co will facilitate building access for all service agents.

### **17.3 Service Requirements**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to Furniture and Office Equipment Services prior to commencement of service which shall include, but not be limited to:

**17.3.1** The Furniture and Office Equipment Service is to be available during normal business hours, 8:00 am to 5:00 pm Monday to Friday.

**17.3.2** Liaising with HMQ re acquisition of furniture and office equipment as directed by HMQ.

- 17.3.3** HMQ will purchase all inventory and non-inventory items, which will be received and distributed by Project Co. HMQ may request Project Co to carry out this activity for an agreed upon fee.
- 17.3.4** Transport all furnishings, equipment and spare parts that may be purchased from time to time by HMQ to its required destination within the facility.
- 17.3.5** Arrange for storage, distribution or off-premises transfer of furniture and equipment, as required and as directed by HMQ.
- 17.3.6** Project Co shall be responsible for installation/affixing of paintings/prints provided by HMQ, which could include the ad-hoc use of specialized skills and equipment.
- 17.3.7** Provide room set-ups for courtrooms, break-out meeting rooms and conference rooms as requested by MAG Occupants through the Help Desk. Project Co shall follow room set-up instructions as outlined in the room set-up booking system. HMQ is responsible for all IT related set-up requirements.
- 17.3.8** Carry out cleaning and dusting services of FF&E as part of Cleaning Services described in Section 6.
- 17.3.9** Prepare an inventory of all new and existing FF&E, excluding “Non-MAG Occupant” Furniture, Fixture and Equipment and maintain the inventory in an asset tracking system similar to the Assets Register described in Section 14, and manage the inventory of spare parts on behalf of HMQ. When changes are made to furniture installations, Project Co shall ensure that the asset tracking system records the location of all parts used in the revised installations and spare parts. The inventory tracking system shall be capable to track items such as:
- (a)** Chairs
  - (b)** Partitions
  - (c)** Panels
  - (d)** Desks
  - (e)** Workstation major components
  - (f)** Filing cabinets
  - (g)** Valuable items
  - (h)** And similar type components that are deemed important by MAG or HMQ
- 17.3.10** Arrange the delivery of required parts to the workplace for access by the service agent that implements the changes, and ensure excess parts are removed from the workplace and stored in accordance with 17.3.5.
- 17.3.11** In respect to furniture procurement, Project Co shall:
- (a)** Be responsible to advise HMQ on obtaining furniture and equipment based on user requirements.
  - (b)** If requested by HMQ, procure furniture and equipment in a manner that meets government procurement policies and guidelines including the use of Vendor of Records suppliers where applicable.
  - (c)** Provide to HMQ periodic management reports as agreed.
  - (d)** Operate and integrate with the existing HMQ electronic requisitioning inventory management and distribution system.
- 17.3.12** Provide and maintain safe and secure custody, in line with Project Co’s security procedures for all furniture and office equipment during the periods in which Project Co is responsible for building security. In this regard, the loss rate (due to theft, reasonably avoidable obsolescence or damage) per annum, of items under the

management of Project Co, shall not exceed 0.1% of total inventory value under the control of Project Co. The responsibility of Project Co in regards to theft does not include any MAG Occupant with respect to theft which occurs in the Discrete Courthouse Areas. The Furniture and Office Equipment Services shall:

- (a) Store material in accordance with manufacturer’s recommendations and CSA standards as may be amended from time-to-time.
- (b) Store and handle furniture and office equipment so state of repair is not compromised.

- 17.3.13 In the event of equipment failure, clearly posted protocols and procedures must be in place such that users know who to call and what alternate equipment is available.
- 17.3.14 A full audit trail of activity is implemented and adheres to agreed standards.
- 17.3.15 Project Co must ensure that receiving and dispatch bays and associated equipment are in compliance with WHMIS regulations.
- 17.3.16 Office equipment serviceability records and repair response times reports shall be presented to HMQ monthly.
- 17.3.17 Updates to the instructions shall be provided to HMQ from time-to-time, as necessary.
- 17.3.18 Following the completion of the user instructions, ensure all MAG Occupants and Non-MAG Occupants are familiar with these Furniture and Office Equipment Service instructions.

**17.4 Quality Monitoring**

- 17.4.1 Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Furniture and Office Equipment Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed between Project Co and HMQ.
- 17.4.2 Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

**17.5 Service Standards**

<b>Standard</b>	<b>Measure</b>	<b>Category</b>	<b>Frequency</b>	<b>Monitoring Method</b>
17.5.1 Performance to Standard - Availability	Available as per 17.3.1	Medium	Monthly	Random audit
17.5.2 Performance to Standard – Moves and Transport	Manage office moves and transport inventory as per 17.3.3, 17.3.4, 17.3.5 and 17.3.9	Medium	Monthly	Report
17.5.3 Special Installations	Perform special installations as per 17.3.6	Low	Monthly	Random audit
17.5.3	Perform courtroom setup	High	Monthly	Random audit

Courtroom Setup	as per 17.3.7			
17.5.5 Inventory Management	Perform inventory management as per 17.3.9 and 17.3.11	Medium	Monthly	Random audit
17.5.6 Storage	Ensure safe and secure storage as per 17.3.11	Medium	Yearly	Report
17.5.7 Functionality	Ensure functionality of office equipment as per 17.3.12	Low	Yearly	Random audit
17.5.8 Audit Trail	Audit Trail as per 17.3.14	Low	Yearly	Random audit
17.5.9 Standards Compliance	Receiving and Dispatch bays as per 17.3.15	Medium	Monthly	Exception report
17.5.10 Reporting	Serviceability and Response reports as per 17.3.16	Low	Monthly	Random audit
17.5.11 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 17.4.1	Medium	Yearly	Report
17.5.12 Quality Assurance	Quality Assurance Program is in place as per 17.4.2	Low	Yearly	Random audit

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

## **18 MATERIAL SERVICES**

The function of Project Co in this Service Category is to provide ongoing support services (i.e. acquisition, receipt, logging, transport, storage and portering) of material within the Project Facilities on behalf of MAG. Please refer to Section 8 (Security Services) for specific detail on the handling of mail and courier items and to Section 17 (Furniture and Office Equipment Services) for handling of furniture and office equipment.

### **18.1 Requirements**

The Material Services include:

- 18.1.1** Material Services on a scheduled and reactive basis as may be required to meet the Service Standards of this Service Category. Project Co shall achieve the following objectives:
  - (a)** Provide an efficient and cost-effective high quality service for the safe and secure receipt and distribution of all material throughout the Project Facilities.
  - (b)** Ensure Service Standards are achieved through provision of a flexible Material Services team with a culture that incorporates continuous development and innovation relating to changes in HMQ's needs, together with equipment, effective management systems, clear performance targets and appropriate levels of monitoring.
- 18.1.2** Reasonable and competent supervision of the work at all times and of all Project Co Staff performing services under this Agreement.
- 18.1.3** Preparing a periodic monitoring report in accordance with relevant aspects of this task as outlined in this Service Category.
- 18.1.4** Ensuring that all requisitions for Material Services may be completed electronically via the Help Desk.
- 18.1.5** The Project Facilities must have the capability to receive shipments on a regular basis.
- 18.1.6** Project Co will be responsible for receiving all shipments via the shipping and receiving holding area and ensuring safe storage and appropriate distribution within the Project Facilities. Special care must be taken to secure the holding area and to verify that the appropriate precautions are in place. It is important that shipping and receiving services do not interfere with the Courthouse Activities. Project Co should be informed 24 hours prior to any incoming deliveries. Large orders of supplies, copier paper and other packages too big or too heavy to scan will be verified against a "Receiving Form" at the receiving dock.



## **18.2 Scope of Services**

Material Services consist, on behalf of MAG, of the following elements:

- (a)** Acquisition and storage of material;
- (b)** Receipt and distribution of material as required;
- (c)** Portering of goods; and
- (d)** Quality Monitoring.

## **18.3 Service Requirements**

Project Co shall develop and implement appropriate operational policies, procedures and practices, together with a customer service philosophy, relative to Material Services prior to commencement of service which shall include, but not be limited to:

### **18.3.1 Acquisition and Storage**

- (a)** Purchase all inventory items and direct-charge non-inventory items for non-Court required Material Services. HMQ will purchase all inventory and non-inventory Court items, which will be distributed by Project Co. Non-inventory Court items include:
  - Desk accessories, such as desk pads, paper trays and other miscellaneous desk accessories.
  - Other general miscellaneous items, such as foot rests, coffee makers, microwaves, kettles, art works, plants, dishes and cutlery.
- (b)** Specifications and standards applicable to Material Services purchasing are to be coordinated with MAG Staff on a quarterly basis and a report on performance for the quarter is to be provided to HMQ one week after quarter-end.
- (c)** Transport all Material that may be purchased from time to time by Project Co or HMQ to its required destination within the Project Facilities.
- (d)** Coordinate with HMQ on a quarterly basis regarding HMQ's specifications and standards where applicable to Material Services purchasing and implement changes required by HMQ
- (e)** Manage and operate an electronic inventory control system that provides up-to-date records of all Material and integrates with the HMQ systems.
- (f)** Provide and maintain safe and secure custody, in line with Project Co's security procedures for all Material 24 hours per day, 365(6) days per year. In this regard, the loss rate (being theft, reasonably avoidable obsolescence or damage) of items under the management of Project Co shall not exceed 0.1% of inventory per annum under the control of Project Co.
- (g)** The Material Services shall:
  - Store material in accordance with manufacturer's recommendations and CSA standards as may be amended from time-to-time;
  - Regularly review inventory items to avoid obsolescence; and
  - Store and handle Material so integrity of supplies is not compromised.

- (h) Project Co must ensure appropriate security and usage tracking controls are in place such that usage billings are directed appropriately within the Project Facilities.

**18.3.2 Receipt and Distribution**

- (a) A responsive and effective receipt and distribution service.
- (b) A provision of all material, uniforms, consumables and equipment required to provide the service and to meet the requirements of this Service Category.
- (c) Control the inward and outward movement of material through the Project Facilities designated material receipt and dispatch area(s). The use of pump carts for hauling heavy supplies and equipment for long distances or through public circulation areas is prohibited unless pre-authorized by HMQ.
- (d) Ensure that the receiving and dispatch bays and associated equipment are maintained to a clean, tidy and hygienic standard, in compliance with WHMIS regulations.
- (e) All deliveries to the Project Facilities are unpacked and placed in designated storage facilities for in each occupant.
- (f) A protocol for routine and emergency deliveries with timed schedules and order deadlines.
- (g) Project Co Staff shall liaise closely with HMQ management staff to facilitate the timely and efficient delivery and collection of all material.
- (h) In respect to all purchased goods, material and stock items, provide an ad-hoc and scheduled distribution to ensure the prompt and safe distribution of material to the relevant points-of-use. The service elevator must be used for delivery of all large items and is to be reserved through the Help Desk.
- (i) The following chart outlines the average number of shipments in similar facilities operated by the Ministry of the Attorney General. Note: This is to be used as a guide for discussion purposes only.

#	Shipment or Delivery	Regularity
1	Canada Post Mail	Daily or twice daily (business days only)
2	Couriered packages	Multiple times daily
3	Office Supplies (e.g.: Grand & Toy)	Weekly
4	Bottled Water	Twice monthly
5	Food services vendor	as needed TBD
6	FF&E changes	Every other month
7	Construction materials	semi-annually

- (j) For outgoing regular mail and courier, MAG Occupant will take the mail and courier packages to designated areas on every floor. Project Co will pick-up at the same time and frequency as mail is delivered. For urgent courier packages,

MAG Occupants will take the package to Project Co designated office, Project Co will make necessary calls and arrangements for courier companies to pick-up packages. MAG Occupants will also have the discretion to arrange for its own courier services for packages deemed to be particularly urgent or sensitive, without the involvement of Project Co. Courier packing slips will be prepared by MAG Occupants.

- (k) Project Co will ensure timely delivery of mail to Canada Post by either arranging for pick-up or delivering to nearest Post Office.
- (l) The shipping and receiving facility must accommodate and receive transportation vehicles under cover for all deliveries in shipment categories one through five.

### **18.3.3 Portering of Goods**

- (a) Establish and operate an effective and user-friendly system to handle movement of goods as requested. Movement requests may be on an emergency, urgent, routine, planned or scheduled basis involving all forms of 'transport' throughout the Facility.
- (b) Circulate internal flyers/posters/newsletters as produced by MAG Occupants
- (c) Take all precautions as may be reasonably required during security alerts
- (d) Provide miscellaneous ad-hoc movement requests from the MAG Occupants

**18.3.4** At all times adhere to, update and maintain as current the operational policies, procedures and practices set out and agreed upon with HMQ. Once every Contract Year on the anniversary of the Completion Date, Project Co will provide HMQ a report detailing where non-adherence has been identified.

**18.3.5** Ensure that a full audit trail of all activity involved in operating and managing the service is implemented and adhered to at all times. The audit trail shall be agreed in advance with HMQ management and must be available for HMQ inspection.

**18.3.6** Following the completion of the user instructions, ensure all MAG Occupants and Non-MAG Occupants are familiar with these Material Services instructions.

## 18.4 Quality Monitoring

**18.4.1** Prior to Completion Date, Project Co and HMQ shall develop, maintain and implement a system for recording and acting on customer feedback and satisfaction with respect to the Material Services through the conduct of a customer user satisfaction survey/questionnaire to be carried out yearly in a format to be agreed upon between Project Co and HMQ.

**18.4.2** Project Co shall develop, maintain and publish results of its own Quality Assurance Program for inspection by HMQ as requested.

## 18.5 Service Standards

Standard	Measure	Category	Frequency	Monitoring method
18.5.1 Performance to Standard- Material Acquisition	Purchase, transport and manage inventory as per 18.3.1	Medium	Monthly	Random audit
18.5.2 Performance to Standard- Material Storage and Tracking	Provide secure custody and tracking as per 18.3.1	High	Monthly	Random audit
18.5.3 Performance to Standard- Material Receiving	Provide receiving services as per 18.3.2	Medium	Monthly	Random audit
18.5.4 Performance to Standard- Material Distribution	Provide distribution services as per 18.3.2	Medium	Monthly	Random audit
18.5.5 Performance to Standard – Material Portering	Provide portering services as per 18.3.3	Medium	Monthly	Random audit
18.5.6 Policies and Procedures	Operational policies and procedures current and adhered to as per 18.3.4.	Medium	Monthly	Random audit
18.5.7 Audit Trail	Audit Trail as per 18.3.5	Low	Yearly	Random audit
18.5.8 Satisfaction Level	A system of recording and acting on customer feedback and satisfaction as per 18.4.1	Medium	Yearly	Report

18.5.9 Quality Assurance	Quality Assurance Program as per 18.4.2	Low	Yearly	Random audit
18.5.10 Reporting	All reporting by Project Co is accurate and reliable	Low	Yearly	Report

The table above refers to specific Service Standards; the Category column refers to the same Category in Appendix A of the Payment Mechanism. The frequency column refers to the frequency that Project Co is required to report back on each of the Service Standards notwithstanding that a Service Standard could pertain to a Session. If a periodic report is not delivered as specified above, it will trigger a Failure Event if not rectified within the Rectification Time in Table 1, and for each Contract Month thereafter until the requirement to deliver the report has been satisfied.

**SCHEDULE E**  
**PART II:**  
**HANDBACK REQUIREMENTS**

Capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Agreement.

The following terms have the following meanings:

**"Effective Age"** means the estimated life of an FM Component, Replacement FM Component and Project Asset based on its use, wear and tear, maintenance and repair history, technological obsolescence and as certified by an independent certifier. The Effective Age may be different than its Physical Age.

**"Escrow Amount"** has the meaning set forth in Section 4.2(a) of this Schedule.

**"Facility Condition Report"** means the Independent Inspector's reports delivered in accordance with Section 1.4(b) of this Schedule.

**"Final Facility Condition Report"** has the meaning set forth in Section 1.4.1 of this Schedule.

**"FM Component"** has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** of the Agreement.

**"Handback Amount"** has the meaning set forth in Section 1.4(b)(ii) of this Schedule.

**"Handback LC"** has the meaning set forth in Section 4.3 of this Schedule.

**"Handback Program"** has the meaning set forth in Section 1.5.2 of this Schedule.

**"Handback Requirements"** has the meaning set forth in Section 1.1 of this Schedule.

**"Handback Works"** has the meaning set forth in Section 1.5.1 of this Schedule.

**"Independent Inspector"** has the meaning set forth in Section 1.3 of this Schedule.

**"Physical Age"** has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** of the Agreement.

**"Replacement FM Component"** has the meaning ascribed to it in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** of the Agreement.

**"Replacement Life Cycle"** means the scheduled periods for replacing systems, equipment and FM Components prescribed in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)** of the Agreement.

## 1. Condition of the Project Facilities

1.1 Without limitation to Project Co's obligations under Article 37 (Termination or Expiry of the Agreement Term) of the Agreement, on the Expiry Date, each element of the Project Assets, the FM Components and the Replacement FM Components shall be in a condition which:

- (a) is consistent with due performance by Project Co of its obligations under the Agreement and, in particular, is consistent with the Project Facilities, the FM Components, the Replacement FM Components, the Project Assets and the Site having been maintained in accordance with the requirements set out in the HMQ Facilities Management Requirements;
- (b) ensures that each FM Component, Replacement FM Component, the Project Assets and other elements of the Project Facilities will have an Effective Age equal to or less than its Physical Age; and
- (c) ensures that each FM Component, Replacement FM Component, the Project Assets and other components of the Project Facilities will not require replacement during its Replacement Life Cycle,

collectively referred to as (the "**Handback Requirements**").

1.2 This Schedule shall not apply to any FF&E not required to be maintained by Project Co in accordance with the Agreement.

1.3 Not less than sixty-six (66) months prior to the Expiry Date, the parties shall agree upon and engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the Project Facilities pursuant to this Schedule. The Independent Inspector shall be the same firm or person appointed pursuant to Section 14 (Life Cycle Renewal Services) of Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**.

1.3.1 Project Co and HMQ shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector appointed to perform the functions specifically described in the Project Agreement (including, for certainty, the Schedules thereto and this Schedule). Project Co acknowledges and agrees that HMQ is not and shall not be responsible for the payment of any fees, costs, expenses or other amounts owing to the Independent Inspector in relation to or in connection with any services provided by it in connection with the Project other than those services specifically contemplated in the Project Agreement (including the Schedules thereto), and any such costs, expenses, fees or any other amounts owing to the Independent Inspector shall be at Project Co's sole cost and expense.

- 1.3.2 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 ten (10) Business Days of the termination of the last Independent Inspector's engagement.
- 1.3.3 In the event the parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.3.1 or Section 1.3.2 of this Schedule by the specified deadline, then the Independent Inspector shall be selected as follows:
- (a) each party shall, within ten (10) Business Days thereafter, select three (3) 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 Dispute Resolution Procedure.
- 1.4 During each of the last five (5) years of the Agreement Term, the Independent Inspector shall:
- (a) conduct an inspection of the Project Facilities, the Project Assets, the Asset Register, the FM Components, the Replacement FM Components and the Site to confirm whether or not the condition of the Project Facilities, Project Assets, the FM Components and the Replacement FM Components are in accordance with the Handback Requirements; and
  - (b) provide a written report to HMQ and Project Co (the "**Facility Condition Report**") which (i) identifies the condition of the Project Facilities, the Project Assets, the FM Components and the Replacement FM Components in relation to the Handback Requirements; (ii) identifies any works (including works previously identified by the Independent Inspector in any prior Facility Condition Report) required to ensure that the Project Assets, the FM Components and the Replacement FM Components will, on the Expiry Date, satisfy the Handback Requirements and specifying the Contract Year in which each of these works will be required to be performed; (iii) specifies the Independent Inspector's estimate of the costs that would be required to perform the works set out in item (ii) above in respect of each relevant Contract Year (the "**Handback Amount**"); and (iv) details how the Handback Amount in item (iii) was calculated.
- 1.4.1 The inspection and the Facility Condition Report shall, in respect of each year other than the Last Contract Year, be completed no later than twenty



(20) Business Days before the end of each applicable year. The inspection and the Facility Condition Report in respect of the Last Contract Year of the Agreement Term shall be completed no later than 6 (six) months prior to the Expiry Date. In addition, a re-inspection shall be conducted by the Independent Inspector on the date that is five (5) Business Days prior to the Expiry Date and the Independent Inspector shall deliver a final Facility Condition Report which contains details specified in Section 1.4(b) above (the "**Final Facility Condition Report**") and, if the Independent Inspector determines, a Handback Certificate.

- 1.4.2 In respect of the Last Contract Year only, after the re-inspection of the Project Facilities by the Independent Inspector set forth in 1.4.1 above has occurred, the Independent Inspector shall on the Expiry Date either (i) issue to Project Co and HMQ a Handback Certificate stating the reasons for such decision; or (ii) notify Project Co and HMQ of its decision not to issue the Handback Certificate stating the reasons for such decision.
- 1.5 Within fifteen (15) Business Days after the completion of the inspection and submission of a Facility Condition Report (other than the Final Facility Condition Report) by the Independent Inspector, if it is found by the Independent Inspector that any of the Project Assets or any FM Component or Replacement FM Component of the Project Assets is not in a condition consistent with the Handback Requirements, then Project Co shall (taking into consideration the Facility Condition Report for such year) provide to HMQ and the Independent Inspector (in addition to any other requirements set forth in the HMQ Facilities Management Requirements) in accordance with the Agreement, the following:
  - 1.5.1 Project Co's proposal as to the maintenance or renewal works (if any) required to be carried out in respect of the relevant FM Component or Replacement FM Component of the Project Assets and any other Project Assets in order to ensure that they will, on the Expiry Date, satisfy the Handback Requirements (the "**Handback Works**");
  - 1.5.2 Project Co's proposal as to the program (the "**Handback Program**") for the carrying out of the Handback Works over the remainder of the Agreement Term, such program describing the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works are to be executed; and
  - 1.5.3 Project Co's proposals for updating the Asset Register.
- 1.6 Three (3) months before the Expiry Date, Project Co will conduct a comprehensive inventory of all the spare parts at the Project Facilities and on the Site and provide such list and the associated prices to HMQ for possible purchase. HMQ will appoint an independent appraiser to evaluate and appraise the amount it should pay for such spare parts. The decision of the independent appraiser will be binding on both HMQ and Project Co. Project Co will fully cooperate with

HMQ and the independent appraiser in this regard. The agreed list will be updated by Project Co at the Expiry Date and will be used by HMQ to inspect the spare parts retained at the Project Facilities and to effect payment for such.

## **2. Review Procedure**

HMQ may, after receipt of the details set out in Sections 1.5.1 to 1.5.3 from Project Co, raise comments in accordance with **Schedule N (Review Procedure)** with respect to Project Co's proposals referred to in Sections 1.5.1 to 1.5.3.

## **3. Dispute Resolution Procedure**

### **3.1**

- (a) The Handback Amount, as identified in the first Facility Condition Report issued by the Independent Inspector, may be disputed by either party in accordance with the Dispute Resolution Procedure;
- (b) The Handback Works and the Handback Program provided by Project Co to HMQ in respect of the items identified by the Independent Inspector in the first Facility Condition Report, may be disputed by either party in accordance with the Dispute Resolution Procedure;
- (c) Except as set forth in Section 3.1(d), neither HMQ nor Project Co may refer any matter relating to the Handback Amount, the Handback Works or the Handback Program to the Dispute Resolution Procedure in any year after the delivery by the Independent Inspector of the first Facility Condition Report unless such matter relates to (i) the Handback Amount in respect of works the Independent Inspector had not previously raised in a prior Facility Condition Report; or (ii) Handback Works and/or a Handback Program not previously proposed by Project Co in accordance with Section 1.5 in respect of a Facility Condition Report delivered in any previous Contract Year;
- (d) HMQ and Project Co are entitled to refer any dispute relating to any matter set forth in the Final Facility Condition Report to the Dispute Resolution Procedure; and
- (e) Any dispute relating to the Handback Amount shall be referred to the Dispute Resolution Procedure no later than twenty-five (25) Business Days following receipt of the applicable Facility Condition Report (including, the Final Facility Condition Report).

## **4. Performance of the Handback Works, Escrow Account and Handback Letter of Credit**

- 4.1 On agreement between HMQ and Project Co, or determination in accordance with the Dispute Resolution Procedure (as permitted pursuant to Section 3.1 above), of

the Handback Works, the Handback Program and/or the Handback Amount (as the case may be), Project Co shall ensure that the Handback Works are carried out in accordance with the Handback Program. Project Co shall carry out the Handback Works at its own cost notwithstanding that the actual costs of the Handback Works may be higher than the Handback Amount.

#### 4.2

- (a) Subject to Sections 4.2(b) and 4.3, HMQ may make deductions from each of the Monthly Service Payments in the amount of the Handback Amount specified by the Independent Inspector in the Facility Condition Report for the applicable Contract Year (to be apportioned equally over the remaining Contract Months of the Agreement Term up until the Expiry Date); such deductions to be made immediately following the date of delivery by the Independent Inspector of the applicable Facility Condition Report and HMQ shall pay same into an interest bearing bank account, upon escrow terms acceptable to the parties or in trust (the "**Escrow Account**"). Such deductions may be made notwithstanding that the Handback Program and/or the Handback Works have not been agreed to by HMQ and Project Co in accordance with **Schedule N (Review Procedure)** and is subsequently disputed pursuant to the Dispute Resolution Procedure or if the amount of the Handback Amount specified by the Independent Inspector is disputed pursuant to the Dispute Resolution Procedure. Following the date of determination in accordance with the Dispute Resolution Procedure, HMQ shall deduct any amount so determined pursuant to the Dispute Resolution Procedure and any adjustments to account for amounts previously deposited into the Escrow Account shall be made (including a release from the Escrow Account or a decrease in the amount of the Handback LC, as the case may be, if the adjudicator has determined that the Handback Amount is less than the Handback Amount determined by the Independent Inspector) and, to the extent the Handback Amount determined by the adjudicator pursuant to the Dispute Resolution Procedure is greater than the Handback Amount determined by the Independent Inspector, Project Co shall pay such increased amount into the Escrow Account, or otherwise increase the amount of the Handback LC, as the case may be.
- (b) If, in any Contract Month, the Handback Amount which is to be deducted from the Monthly Service Payments (as determined in Section 4.2(a)) is greater than the relevant Monthly Service Payments for such Contract Month, HMQ may deduct the difference between the Handback Amount apportioned for such Contract Month from the next Monthly Service Payment or from such other Contract Months as is otherwise agreed between the parties.
- (c) All amounts paid into the Escrow Account are to be released to Project Co once the Handback Works (as agreed to between HMQ and Project Co

pursuant to the Review Procedure or as determined in accordance with the Dispute Resolution Procedure) have been carried out in accordance with this **Schedule E, Part II** and the Independent Inspector has confirmed in writing to HMQ and Project Co that the Handback Works completed by Project Co meet the Handback Requirements (such confirmation to be in the form of a Handback Certificate for the Last Contract Year of the Agreement Term).

- (d) The accrued amount paid into the Escrow Account shall not exceed the aggregate Handback Amount (as determined by the Independent Inspector in each Facility Condition Report (including, for certainty, the Final Facility Condition Report) or as determined pursuant to the Dispute Resolution Procedure) and any interest accrued on the Escrow Account not required to satisfy the Handback Requirements shall be for the account of Project Co.
  - (e) In each year following the first determination of the Handback Amount by the Independent Inspector or otherwise pursuant to the Dispute Resolution Procedure in accordance with this Schedule, the amounts to be deducted from the Monthly Service Payments shall be adjusted to reflect amounts already held in the Escrow Account or secured by a Handback LC, as the case may be.
- 4.3 As an alternative to the deductions permitted by Section 4.2, Project Co may, and in any event if the Handback Amount is agreed between HMQ and Project Co to be, or determined in accordance with the Dispute Resolution Procedure, to be greater than the anticipated remaining Monthly Service Payments during the balance of the Agreement Term, Project Co shall within five (5) Business Days of the agreement between HMQ and Project Co or determination in accordance with the Dispute Resolution Procedure, procure the provision of an irrevocable letter of credit (the "**Handback LC**") in favour of HMQ in an amount equal to the aggregate amount which HMQ is permitted to deduct pursuant to Section 4.2 but has not yet deducted, in a form and from a bank acceptable to HMQ.
- 4.4 Project Co shall carry out the Handback Works to the satisfaction of HMQ and the Independent Inspector in accordance with the Handback Program prepared by Project Co in respect of such Handback Works so as to meet the Handback Requirements.
- 4.5 Notwithstanding:
- 4.5.1 the agreement of HMQ to any Handback Works, the Handback Program, Handback Amount or the Handback LC;
  - 4.5.2 the participation of HMQ in any inspection under this Schedule; or
  - 4.5.3 the complete or partial carrying out of the Handback 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 pursuant to the Agreement, including, without limitation, in accordance with the HMQ Facilities Management Requirements.

**5. Completion of the Handback Works and Release of Amounts from Escrow Account**

5.1 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. HMQ shall consider such request within ten (10) Business Days and if the funds in the Escrow Account exceed the value (based on the total Handback Amount determined by the Independent Inspector or otherwise determined pursuant to the Dispute Resolution Procedure) of all remaining Handback Works (as agreed to between HMQ and Project Co pursuant to the Review Procedure or as determined in accordance with the Dispute Resolution Procedure) yet to be performed (as identified in the most recent Facility Condition Report delivered by the Independent Inspector), then HMQ shall pay the excess to Project Co from the Escrow Account within ten (10) Business Days thereafter. Project Co shall include with its request all information reasonably required by HMQ to evaluate such requests.

5.2 At any time after a Handback LC has been delivered, if the Independent Inspector confirms that the Handback Works satisfy the Handback Requirements, HMQ shall, subject to the right of either party to dispute whether the Handback Works satisfy the Handback Requirements, return the Handback LC to Project Co. At any time after a Handback LC has been delivered, if the Independent Inspector confirms that any part of the Handback Works satisfy the applicable Handback Requirements, HMQ shall, subject to (i) the right of either party to dispute whether the Handback Works satisfy the Handback Requirements; and (ii) the delivery by Project Co to HMQ of a replacement Handback LC in favour of HMQ in an amount equal to the aggregate amount HMQ's then permitted to deduct pursuant to Section 4.2 (but has not yet deducted) in a form and from a bank acceptable to HMQ, release the Handback LC delivered by Project Co in respect of the Handback Works which have been completed to the satisfaction of the Independent Inspector. If the Handback Works are not completed by Project Co within the time specified by the Independent Inspector in any Facility Condition Report, HMQ may withdraw funds from the Escrow Account or call upon any and all Handback LC's in an amount equivalent to the total Handback Amounts identified by the Independent Inspector in the applicable Facility Condition Report(s). HMQ shall pay any remaining funds in the Escrow Account (including any accrued interest) to Project Co and return any remaining Handback LC's to Project Co if and only if no other Handback Works, as identified in each subsequent Facility Condition Report (including, for certainty, the Final Facility Condition Report) delivered by the Independent Inspector pursuant to Section 1.4 of this Schedule, have been identified by the Independent Inspector as not satisfying the Handback Requirements.

- 5.3 If a Handback Certificate is not delivered at or immediately prior to the Expiry Date by the Independent Inspector (after re-inspection of the Project Assets, FM Components, Replacement FM Components and Project Facilities pursuant to Section 1.4), Project Co shall, subject to and after determination of the Handback Amount by the parties or otherwise pursuant to the Dispute Resolution Procedure (if the Handback Amount identified by the Independent Inspector in the Final Facility Condition Report is disputed by either party in accordance with the terms hereof), pay to HMQ the Handback Amount as set out in the Final Facility Condition Report or such other Handback Amount as is otherwise determined by the parties or pursuant to the Dispute Resolution Procedure. Such payment shall be made not later than twenty (20) Business Days after the Expiry Date, unless the Handback Amount is disputed pursuant to Dispute Resolution Procedure, in which case, it shall be paid in accordance with the determination of the adjudicator pursuant to the Dispute Resolution Procedure, and HMQ shall thereafter (i) return any outstanding Handback LCs to Project Co; and (ii) release funds from the Escrow Account (if any). If no such payment is made, HMQ may withdraw from the Escrow Account (or call under the relevant Handback LC) an amount equivalent to the payment of which it is then entitled. If the Handback Certificate is issued by the Independent Inspector pursuant to Section 1.4, subject to any determination made pursuant to the Dispute Resolution Procedure or any determination made by a court of competent jurisdiction (if the Adjudicator's decision is disputed), Project Co shall have no further liability with respect to the Project Assets not complying with the Handback Requirements or with respect to the Handback Works.
- 5.4 In the period starting six (6) years before the Expiry Date, Project Co and HMQ shall meet to discuss whether HMQ requires any modifications to the Handback Requirements, and any such requirement shall be dealt with in accordance with the provisions of Article 10 (Change in Project Works and Service Period Works) of the Agreement.

## **6. Handback Certificate**

- 6.1 Either Project Co or HMQ may, within ten (10) Business Days after receipt of the notice given by the Independent Inspector to issue or not to issue the Handback Certificate at the end of the Agreement Term, object to any matter set out in such notice. Each such notice from Project Co or HMQ, as the case may be, shall give details of the grounds of such objection and shall set out Project Co's or HMQ's proposals (as applicable) in respect of such matters.
- 6.2 If no agreement is reached between Project Co and HMQ as to any matter referred to in Project Co's or HMQ's notice given in accordance with Section 6.1 within twenty (20) Business Days of receipt of that notice by HMQ or Project Co, as the case may be, then either Project Co or HMQ may dispute the decision by the Independent Inspector to issue or not issue the Handback Certificate in accordance with the Dispute Resolution Procedure as to:

- 6.2.1 whether the Project Assets, the FM Components and Replacement FM Components comply in all respects with the Handback Requirements; and
  - 6.2.2 the estimated cost of ensuring that the Project Assets comply in all respects with the Handback Requirements, where the Independent Inspector has determined that the Project Assets do not comply in all respects with the Handback Requirements.
- 6.3 In the event that a determination in accordance with the Dispute Resolution Procedure specifies works or costs which are different from those set out in the Final Facility Condition Report, then such Final Facility Condition Report shall be deemed to be amended accordingly and all deductions and payments that were permitted or required by this Schedule, shall be adjusted accordingly.

## **7. Handover of Records**

On the Expiry Date, Project Co shall deliver to HMQ all records, manuals and the information in its possession relating to the Project Assets, the FM Components and the Replacement FM Components and shall transfer to HMQ the benefit of all outstanding warranties or extended warranty periods in relation to any FM Component or Replacement FM Component of the Project Assets.

## **8. Other Considerations**

Project Co agrees to fully co-operate both before and after termination of this Agreement with HMQ to assist HMQ in the turnover of the Project Assets, the FM Components and the Replacement FM Components and shall meet with HMQ, upon request by HMQ for a period of six (6) months after the end of the Agreement Term to discuss general operational issues regarding the operation of the Project Facilities. In order to retain the operational viability and integrity of the Project Facilities, HMQ and/or its third-party designate shall be entitled, at Handback, to receive from Project Co all reasonable assistance as well as essential and relevant historical and current records, information and data, in its possession, in a form useable by HMQ. This assistance and information includes, but is not limited to:

### **8.1 Human Resources**

- 8.1.1 For a period of six (6) months prior to the Expiry Date, Project Co shall permit HMQ or its third-party designate to shadow its ongoing Project Facilities management operations.
- 8.1.2 For a period of six (6) months following the Expiry Date, Project Co shall, on a reimbursable basis, provide assistance in the form of suitably-trained personnel for consultation with HMQ or its third-party designate on the ongoing Project Facilities management operations.

8.1.3 Project Co, following the Expiry Date, shall not impede the ability of its personnel to transfer, as desired, to the employ of HMQ or its third-party designate.

8.2 Health and Safety; Certifications, Audits and Liabilities

8.2.1 Project Co shall maintain, until the Expiry Date, currency of all required Health and Safety Certifications associated with the operation of the Project Facilities and its component systems.

8.2.2 For a period of six (6) months prior to the Expiry Date, Project Co shall permit examination, by HMQ or its third-party designate, of all Health and Safety documentation and to conduct a building facility audit, at its discretion, to satisfy itself with respect to the currency of documentation and procedures.

8.2.3 Where shortcomings are discovered in respect of Health and Safety Certifications or Health and Safety documentation, Project Co shall immediately take remedial action as required by Applicable Law.

8.3 Service Contracts; Novation, Scope and Liabilities

8.3.1 Project Co shall ensure that service contracts for critical building systems and components (elevators and other vertical lifting devices, fire alarm systems, HV electrical systems, etc.) are assignable, at HMQ's option, to HMQ or to its third-party designate.

8.3.2 Project Co shall ensure all such service contracts are clear of litigation or other legal encumbrance.



**SCHEDULE F: PAYMENT MECHANISM**

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## **PART A: INTERPRETATION**

### **1. Definitions**

The following terms shall have the following meanings:

- 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.
- 1.2 “Ad Hoc Services” has the meaning given to it in the Schedule E Part I: Facilities Management Specifications.
- 1.3 “Ad Hoc Services Request” means a request for the provision of Ad Hoc Services made by MAG/HMQ to Project Co in accordance with Schedule E Part I: Facilities Management Specifications.
- 1.4 “Additional Period” has the meaning given to it in Part C Section 6.4 of this Schedule F: Payment Mechanism.
- 1.5 “Agreement Term” has the meaning given to it in the Project Agreement.
- 1.6 “Annual Service Payment” means the sum in Canadian \$ calculated in accordance with the provisions set out in Part B, Section 2 of this Schedule F: Payment Mechanism, exclusive of any municipal property taxes.
- 1.7 “Applicable Law” has the meaning given to it in the Project Agreement.
- 1.8 “Availability Condition” means any of (i) the Accessibility Condition, (ii) the Safety Condition, (iii) the Use Condition or, as appropriate, (iv) the Prescribed Operational Function Condition.
- 1.9 “Base Date” means October 5, 2006.
- 1.10 “Benchmarking” has the meaning given to it in the Project Agreement.
- 1.11 “Completion Date” has the meaning given to it in the Project Agreement.
- 1.12 “Contract Day” means a 24-hour period commencing at midnight at the start of the relevant day.
- 1.13 “Contract Month” has the meaning given to it in the Project Agreement.
- 1.14 “Contract Year” has the meaning given to it in the Project Agreement.

- 1.15 “Court Services” has the meaning given to it in the Facilities Program found as part of Schedule B, Part I (Design Requirements) of the Project Agreement.
- 1.16 “Deduction” means a deduction made from a Monthly Service Payment in accordance with this Schedule F: Payment Mechanism.
- 1.17 “Dispute Resolution Procedure” means the procedure set out in Article 43 (Dispute Resolution) of the Project Agreement.
- 1.18 “Element” means an area of the Facility specified as such in Appendix B to this Schedule F: Payment Mechanism comprising two or more Spaces (e.g. Element A1).
- 1.19 “Energy Services” has the meaning given to it in the Project Agreement.
- 1.20 “Event” means an incident or state of affairs affecting a Functional Part which does not meet or comply with the Service Standards set out in Schedule E Part I: Facilities Management Specifications and/or does not satisfy the Availability Condition; subject to the provisions of this Schedule F: Payment Mechanism an Event is capable of becoming an Unavailability Event, or a Failure Event, as appropriate, if it is not Rectified within the Rectification Time.
- 1.21 “Failure Event” means any failure by Project Co to provide the Services in accordance with Schedule E: Facilities Management Specifications and which, where a Rectification Time applies, has not been rectified within the relevant Rectification Time, except for an Unavailability Event.
- 1.22 “Failure Event Deduction” means an amount calculated in accordance with Section 3 Part C of this Schedule F.
- 1.23 “Force Majeure Event” has the meaning given to it in the Project Agreement.
- 1.24 “Functional Part” means a Space or an Element according to the context in which it is used.

- 1.25 “Functionality Date” means the date determined by the Independent Certifier, which is at least 60 days after the Completion Date, that all Province Persons within Court Services are situated within the Project Facilities and the Project Facilities are fully functional and in apparent regular use.
- 1.26 “Gainshare Adjustment” has the meaning given to it in Schedule M of the Project Agreement.
- 1.27 “Good Industry Practice” has the meaning given to it in the Project Agreement.
- 1.28 “HMQ” means Her Majesty the Queen in right of Ontario as represented by the Ministry of Public Infrastructure Renewal.
- 1.29 “Helpdesk” means the contact point to be established by Project Co pursuant to Section 11, Schedule E Part I Facilities Management Specifications in respect of the Helpdesk Service for the notification of Ad Hoc Services Requests, the occurrence of Events and other day to day matters arising in relation to the provision of Services.
- 1.30 “HMQ Representative” has the meaning given to it in the Project Agreement.
- 1.31 “HMQ’s Requirements” has the meaning given to it in the Project Agreement.
- 1.32 “High Failure Event” means a Failure Event which has been designated in Schedule E Part I Facilities Management Specifications or in this Schedule F: Payment Mechanism as a High Failure Event.
- 1.33 “High Unavailability Event” means an Unavailability Event which has occurred for a Space with a Ranking of 6 in Appendix B of this Schedule F.
- 1.34 “Independent Certifier” has the meaning given to it in the Project Agreement.
- 1.35 “Initial Operational Phase” means a period of 30 days following, as the case may be, a New Service Provider Start Date or the Functionality Date, as more particularly described in Part C Section 2 of this Schedule F.
- 1.36 “Insurance Adjustment” has the meaning given to it in Schedule I of the Project Agreement.
- 1.37 “Jury Assembly Waiting Area” means the Space identified as A501 in Appendix B of this Schedule F: Payment Mechanism.
- 1.38 “Key Linked Space” means a Space which is specified as a Key Linked Space in Appendix B of this Schedule F: Payment Mechanism.
- 1.39 “Lobby” means the Space identified as J101 in Appendix B of this Schedule F: Payment Mechanism.

- 1.40 “Low Failure Event” means a Failure Event which has been designated in Schedule E Part I: Facilities Management Specifications or in this Schedule F: Payment Mechanism as a Low Failure Event.
- 1.41 “Low Unavailability Event” means an Unavailability Event which has occurred for a Space with a Ranking of 0 to 3 (inclusive) in Appendix B of this Schedule F.
- 1.42 “Market Tested Services” has the meaning given to it in the Project Agreement.
- 1.43 “Market Testing” has the meaning given to it in the Project Agreement.
- 1.44 “Medium Failure Event” means a Failure Event which has been designated in Schedule E Part I: Facilities Management Specifications or in this Schedule F: Payment Mechanism as a Medium Failure Event.
- 1.45 “Medium Unavailability Event” means an Unavailability Event which has occurred for a Space with a Ranking of 4 or 5 in Appendix B of this Schedule F.
- 1.46 “Minimum Agreed Availability Conditions” means the Accessibility Condition, the Safety Condition, and the Prescribed Operational Function Condition (as the case may be) together with the Use Condition, as temporarily modified with the approval of MAG/HMQ for the purposes of a Temporary Repair.
- 1.47 “Minimum Unavailability Deduction” means the sum of \$200 which shall be index linked.
- 1.48 “Monthly Monitoring Report” means the report specified in Schedule E Part I: Facilities Management Specification in respect of a Service or a part of a Service which Project Co has an obligation to prepare for MAG/HMQ in respect of its performance of that Service or the relevant part of it during a specified period.
- 1.49 “Monthly Service Payment” means the sum in Canadian \$ calculated in accordance with the provisions set out in Part B, Section 1 of this Schedule F: Payment Mechanism.
- 1.50 “New Service Provider” means a newly appointed Service Provider.
- 1.51 “New Service Provider Start Date” means in respect of each Service the Relevant Service Transfer Date and, where a Service Provider is replaced by a new Service Provider, either:
- (a) in the case of replacement following a Market Testing, the date established in accordance with Article 50 (Market Testing) of the Project Agreement; or
  - (b) in other cases, the date on which the Service commences to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to

be provided by the replacement Service Provider.

- 1.52 “Painshare Adjustment” has the meaning given to it in Schedule M of the Project Agreement.
- 1.53 “Payment Commencement Date” has the meaning given to it in the Project Agreement.
- 1.54 “Performance Monitoring Period” means the period of time over which Project Co is required to monitor for the purposes of the Monthly Monitoring Report.
- 1.55 “Permanent Repair” means Rectification following the agreement of a Temporary Repair.
- 1.56 “Permanent Repair Deadline” has the meaning given to it in Section 7.1.3 of Part C in this Schedule F: Payment Mechanism.
- 1.57 “Prescribed Operational Function” means the use or purpose of the relevant Functional Part, as described in Appendices B and F of this Schedule F: Payment Mechanism.
- 1.58 “Prescribed Operational Function Condition” means a state or condition of the Relevant Functional Part which allows the Prescribed Operational Function for that Functional Part to be carried on and performed having regard to the practicalities of carrying on and performing such Prescribed Operational Function.
- 1.59 “Project” has the meaning given to it in the Project Agreement.
- 1.60 “Project Facilities” has the meaning given to it in the Project Agreement.
- 1.61 “Province Persons” has the meaning given to it in the Project Agreement.
- 1.62 “Public Washrooms” means washrooms within the courthouse specifically identified for use by the public.
- 1.63 “Ranking” means the relative criticality ranking assigned to each Space as considered in the calculation of indicative Unavailability Deductions for the purposes of Appendix B of this Schedule F (0 = lowest; 6 = highest).
- 1.64 “Ratchet” means the multiple applied to the Unavailability Deduction, Unavailable but Used Deduction or Failure Event Deduction in accordance with Sections 3 and 5 of Part C of this Schedule F and being a factor of 2.
- 1.65 “Rectify or Rectification” means, following the occurrence of an Event, remedying the Event so that any Functional Part which has been affected complies with the Service Standards set out in Schedule E Part I: Facilities Management Specifications and/or satisfies the Availability Conditions and “Rectify” shall be construed accordingly.

- 1.66 “Rectification Confirmation Notice” means a formal written notice from Project Co to HMQ Representative confirming the date and time that Rectification has been completed with respect to the relevant Event.
- 1.67 “Rectification Time” has the meaning given to it in Schedule E Part I: Facilities Management Specifications.
- 1.68 “Relevant Service Transfer Date” means any date in which a Service Provider is replaced with a new Service Provider in accordance with the terms of the Project Agreement and all Schedules thereto.
- 1.69 “Relief Event” has the meaning given to it in the Project Agreement.
- 1.70 “Repeated Failure Event” has the meaning given to it in Part C of this Schedule F: Payment Mechanism.
- 1.71 “Review Date” has the meaning given to it in the Project Agreement.
- 1.72 “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, occupy and use such Functional Part to do so safely including but not limited to compliance with Applicable Law.
- 1.73 “Sallyport” means the Space identified as D103 in Appendix B of this Schedule F: Payment Mechanism.
- 1.74 “Scheduled Maintenance Plan” has the meaning given to it in Schedule E Part I: Facilities Management Specifications.
- 1.75 “Service” means any single or group of services identified as part of a Service Category.
- 1.76 “Service Category” has the meaning given to it in the Schedule E Part I: Facilities Management Specifications.
- 1.77 “Service Failure Points” means points allocated to Project Co and to individual Service Providers in respect of the occurrence of Unavailability Events and Failure Events which are determined by the provisions set out in Part G and Appendix A of this Schedule F: Payment Mechanism.
- 1.78 “Service Provider” has the meaning given to it in the Project Agreement.
- 1.79 “Service Standard” has the meaning given to it in Schedule E Part I: Facilities Management Specifications.
- 1.80 “Session” means each of the periods as specified in D of this Schedule F: Payment Mechanism, in every 24 hours.



- 1.81 “Space” means a room or space within an Element which is specified as such in Appendix B to this Schedule F: Payment Mechanism (e.g. A101).
- 1.82 “Temporary Repair” means, in respect of the occurrence of an Event, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Service Failure for the period until a Permanent Repair can be undertaken.
- 1.83 “Total Unavailability Deduction” means an amount calculated in accordance with Section 5 Part C of this Schedule F: Payment Mechanism.
- 1.84 “Total Volume Adjustment” means an amount calculated for the relevant Contract Month in accordance with the formula set out in Part F of this Schedule F: Payment Mechanism.
- 1.85 “Unavailable and Unavailability” means a state or condition of the relevant Functional Part which does not comply with any one or more of the Availability Conditions. For greater clarity, a Functional Part will not be deemed Unavailable during maintenance when such maintenance is being conducted as specified in the Scheduled Maintenance Plan or as otherwise agreed in writing by HMQ.
- 1.86 “Unavailable but Used” has the meaning given to it in Section 5.4 of Part C of this Schedule F: Payment Mechanism.
- 1.87 “Unavailability Deduction” means a Deduction arising due to the occurrence of an Unavailability Event, calculated in accordance with Schedule F: Payment Mechanism.
- 1.88 “Unavailability Event” means an Event which has not been Rectified within the relevant Rectification Time, if applicable, and which causes a Functional Part to be Unavailable.
- 1.89 “Use Condition” means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part.
- 1.90 “Use Parameters” means the range of functional requirements for the proper use and enjoyment of a Functional Part for its particular purpose relating to (i) temperature; (ii) humidity; (iii) air-quality; (iv) lighting; (v) power (essential and non-essential); and (vi) safe water (relating to availability, temperature, quality and safe sewerage system), as the same are specified in HMQ’s Requirements.
- 1.91 “Volume Remunerated Item” has the meaning given to it in Part F of this Schedule F: Payment Mechanism.
- 1.92 “Warning Notice” has the meaning given to it in the Project Agreement.

1.93 “Whole Courthouse Unavailability” means a pre-defined condition as described in Section 5.6 of Part C this Schedule F: Payment Mechanism that causes all Functional Parts in the Project Facilities to be deemed Unavailable for each Session.

## **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:

$$MSP = ASP_n \div 12 + TVA - \sum D + GS - PS + E + IA$$

where:

- 1.1.1 **MSP** is the Monthly Service Payment for the relevant Contract Month;
  - 1.1.2 **ASP<sub>n</sub>** is the Annual Service Payment for the relevant Contract Year calculated in accordance with Section 2.1, Part B of this Schedule F: Payment Mechanism;
  - 1.1.3 **TVA** is the Total Volume Adjustment in respect of the relevant Contract Month, calculated in accordance with Section 1.1, Part F of this Schedule F: Payment Mechanism;
  - 1.1.4 **∑D** is the sum of Deductions in respect of the relevant Contract Month, in relation to Failure Events and Unavailability Events calculated in accordance with the provisions set out in Part C of this Schedule F: Payment Mechanism;
  - 1.1.5 **GS** means any Gainshare Adjustment calculated in accordance with Schedule M (Energy Matters) of the Project Agreement, if applicable;
  - 1.1.6 **PS** means any Painshare Adjustment calculated in accordance with Schedule M (Energy Matters) of the Project Agreement, if applicable; and
  - 1.1.7 **E** is any amount paid for Energy Services by Project Co in the relevant Contract Month, if applicable.
  - 1.1.8 **IA** is the Insurance Adjustment calculated in the relevant Contract Month, if applicable.
- 1.2 In the Contract Month in which the Completion Date falls and in the last Contract Month of the Agreement 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 Agreement Term (for the last month).

### **2. Annual Service Payment**

- 2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$ASP_n = EF + \left( ASP_0 \times \left( 1 + F \times \left( \frac{CPI_n}{CPI_0} - 1 \right) \right) \right)$$

where:

- 2.1.1 **ASP<sub>n</sub>** is the Annual Service Payment for the relevant Contract Year;
- 2.1.2 **ASP<sub>0</sub>** is \$19,755,000, being the Annual Service Payment at the Base Date except to the extent that Section 2.2 of this Part B applies;
- 2.1.3 **CPI<sub>n</sub>** is the value of the Consumer Price Index (Canada) published or determined with respect to the month immediately preceding the first Contract Month of the relevant Contract Year;
- 2.1.4 **CPI<sub>0</sub>** is the value of the Consumer Price Index (Canada) published or determined with respect to the month in which the Base Date falls; and
- 2.1.5 **F** is the indexation factor of [REDACTED].
- 2.1.6 **EF** is the annual energy fee payable to Project Co for the management of energy in the amount of [REDACTED].
- 2.2 For the purposes of Section 2.1.2 of this Part B, **ASP<sub>0</sub>** shall, with effect from each Review Date (or such other date as may be established in accordance with the Project Agreement) be **ASP<sub>0</sub> (new)**.

### 3. Effect of Benchmarking and Market Testing on Annual Service Payment

- 3.1 **ASP<sub>0</sub> (new)** shall be effective from the date established in accordance with Articles 49 (Benchmarking) and 50 (Market Testing) of the Project Agreement and be the sum calculated in accordance with the following formula:

$$ASP_0(new) = ASP_0(original) \pm MTA$$

where:

- 3.1.1 **ASP<sub>0</sub> (new)** is the Annual Service Payment revised to reflect any change to the costs of any of the Market Tested Services following a Benchmarking or Market Testing and expressed in value of money terms as if it were payable at the Base Date;

- 3.1.2 **ASP<sub>0</sub> (original)** is the figure in Canadian \$ set out in Section 2.1.2 of this Part B; and
- 3.1.3 **MTA** is the adjustment to the cost of the Market Tested Services following a Benchmarking or Market Testing (if any and whether up or down) re-based to reflect the value of the amount of the adjustment at the Base Date.
- 3.2 For the purposes of Section 3.1.3 of this Part B, **MTA** shall be a figure in Canadian \$ (whether positive or negative) calculated in accordance with the formula:

$$MTA = (NAP - (OAP \times CPI_r \div CPI_0)) \times (CPI_0 \div CPI_r)$$

where:

- 3.2.1 **NAP** is the aggregate of the new annual prices for the Market Tested Services arising from the Benchmarking or Market Testing;
- 3.2.2 **OAP** is the aggregate of the original annual prices for the Market Tested Services as set out in the second column of Appendix E of this Schedule F: Payment Mechanism;
- 3.2.3 **CPI<sub>r</sub>** is the value of the Consumer Price Index (Canada) published or determined with respect to the month in the Contract Year in which the Review Date falls; and
- 3.2.4 **CPI<sub>0</sub>** is the value of the Consumer Price Index (Canada) published or determined with respect to the month in which the Base Date falls.

## **PART C: DEDUCTIONS FROM SERVICE PAYMENTS**

### **1. Entitlement To Make Deductions**

- 1.1 If at any time during the Agreement Term an Unavailability Event or a Failure Event shall occur, MAG/HMQ shall, subject to Sections 1.2 below, be entitled to make deductions from the relevant Monthly Service Payment in respect of that Unavailability Event or Failure Event.
- 1.2 The maximum aggregate of all Deductions that MAG/HMQ can make from a Monthly Service Payment in respect of any Contract Month shall be the Annual Service Payment divided by 12.

### **2. Initial Operational Phase**

- 2.1 In respect of each Service, there shall be an Initial Operational Phase<sup>1</sup>. During the first 15 days of the Initial Operational Phase, no Deductions may be made in respect of Failure Events occurring in the provision of the relevant Service. During the second 15 days of the Initial Operational Phase, Deductions may be made in respect of Failure Events occurring in the provision of the relevant Service at a level equal to [REDACTED] of the level that would otherwise be applicable in accordance to this Schedule F: Payment Mechanism. For greater clarity, no Deductions will be made prior to the Functionality Date.
- 2.2 There shall be no relief during any Initial Operational Phase with respect to Deductions which relate to Unavailability Events.

### **3. Amount of Deductions for Failure Events**

- 3.1 Subject to Sections 1 and 2 of this Part C, the amount of the Deduction in respect of a Failure Event shall be as follows:
  - 3.1.1 In the case of a Low Failure Event, the sum of [REDACTED], index-linked;
  - 3.1.2 In the case of a Medium Failure Event, the sum of [REDACTED], index-linked;  
and
  - 3.1.3 In the case of a High Failure Event, the sum of [REDACTED], index-linked.

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<sup>1</sup> Relief for an Initial Operational Phase is given whenever there is a change of Service Provider, but not whenever a new sub-contract is awarded.

- 3.2 If, in each of any three or more Sessions in any rolling 30 day period any Failure Event Deduction is made (which need not be consecutive) (the “Repeated Failure Event”) by MAG/HMQ in relation to the same Service Standard, then:
- (a) in respect of the third and every subsequent Failure Event (whether or not consecutive) the Rectification Time shall not apply for the third and subsequent Failure Event in that 30 day period; and
  - (b) the Ratchets will be applied to the third and each subsequent Failure Event, in that 30 day period.

#### 4. Tolerances For Low Failure Events

- 4.1 No Deduction may be made by MAG/HMQ to the Monthly Service Payment for the relevant Contract Month in respect of any Low Failure Event if:
- 4.1.1 In respect of the Service in which the relevant Low Failure Event has occurred, the relevant Low Failure Event and all other Low Failure Events which have occurred in the Contract Month in respect of that Service do not exceed in aggregate 10 in number; and
  - 4.1.2 In respect of all Services, the relevant Low Failure Event and all other Low Failure Events in all Services which have occurred in the Contract Month do not exceed in aggregate 20 in number.
- 4.2 If more than 10 Low Failure Events occur in respect of an individual Service in a Contract Month a Deduction shall be made in respect of *each* Low Failure Event which shall have occurred in that Service during that Contract Month.
- 4.3 If more than 20 Low Failure Events in respect of all Services occur in a Contract Month, a Deduction shall be made in respect of *each* Low Failure Event which shall have occurred during the Contract Month.

#### 5. Deductions For Unavailability Events

- 5.1 Subject to the other provisions of this Part C, if there is any Unavailability Event in the Contract Month, the Total Unavailability Deduction for each Contract Month will be the higher of:
- (a) The Minimum Unavailability Deduction; and
  - (b) An amount calculated as the Total Unavailability Deduction in accordance with the following formula:

$$TUD_n = \sum UD_n$$

where:

5.1.1 **TUD<sub>n</sub>** is the Total Unavailability Deduction for Contract Month n;

5.1.2  $\sum \mathbf{UD}_n$  is the sum of the Unavailability Deductions for each Functional Part for Contract Month n;

5.2 Subject to the other provisions of this Part C, if any Functional Part is Unavailable during a Session and is not used by MAG/HMQ, after such Unavailability begins during that Session, then the Functional Part will be Unavailable for such Session until it is permanently rectified.

$$UD_n = UDS \times DP_n \times R$$

where:

5.2.1 **UD<sub>n</sub>** is the Unavailability Deduction applicable to that Functional Part for Contract Month n;

5.2.2 **UDS** is the Unavailability Deduction per Session for that Functional Part, determined by reference to Appendix B of this Schedule F: Payment Mechanism;

5.2.3 **DP** is the Deduction Period, being the number of Sessions in Contract Month n in which the Functional Part was Unavailable; and

5.2.4 **R** is the Ratchet where applicable, which may be applied pursuant to Sections 3.2 and 8.1 of this Part C.

5.3 On the commencement of each Contract Year, the Unavailability Deductions set out in Appendix B of this Schedule F: Payment Mechanism shall be indexed in accordance with the following:

$$UDS_n = UDS_0 \times \left( \frac{CPI_n}{CPI_0} \right)$$



where:

- 5.3.1 **UDS<sub>n</sub>** is the Unavailability Deduction per Session for Contract Year n;
  - 5.3.2 **UDS<sub>0</sub>** is the Unavailability Deduction per Session at the Base Date;
  - 5.3.3 **CPI<sub>n</sub>** is the value of the Consumer Price Index (Canada) published or determined with respect to the month immediately preceding the first Contract Month of the relevant Contract Year; and
  - 5.3.4 **CPI<sub>0</sub>** is the value of the Consumer Price Index (Canada) published or determined with respect to the month in which the Base Date falls.
- 5.4 If the Space is Unavailable but MAG/HMQ continues to use it (“Unavailable but Used”), a factor of 50% shall be multiplied against the Unavailability Event Deduction for the relevant Functional Part.
- 5.5 In the event that a Space as identified in Appendix B of this Schedule F: Payment Mechanism becomes Unavailable and subject to the other provisions of this Part C, all linked Spaces in that Functional Part shall be deemed Unavailable and the related Unavailability Event Deductions shall apply.
- 5.6 Whole Courthouse Unavailability shall apply to a Session where:
- 5.6.1 In any Session, the aggregate area of all Public Washrooms which are Unavailable or Unavailable but Used exceeds **[REDACTED]** (or such percentage as required by Applicable Law) of the aggregate area of all Public Washrooms;
  - 5.6.2 In any Session, greater than **[REDACTED]** of all Spaces are Unavailable, measured by the square meters outlined in Appendix B of this Schedule F: Payment Mechanism;
  - 5.6.3 In any Session, all of the Spaces in Elements B1, B2, B3, and B4 (as identified in Appendix B of this Schedule F: Payment Mechanism) are Unavailable;
  - 5.6.4 In any Session, all of the Spaces in Elements C2, C4, C5, C6, C7, C8, C9, C10, and C11 (as identified in Appendix B of this Schedule F: Payment Mechanism) are Unavailable; or
  - 5.6.5 In any Session, the Lobby is Unavailable.

- 5.7 In any Session where greater than **[REDACTED]** of an Element is Unavailable, measured by the square meters outlined in Appendix B of this Schedule F: Payment Mechanism, the entire Element shall be deemed Unavailable, and the sum of all Unavailability Deductions pertaining to that Element shall be applied.
- 5.8 In any Session where the Sallyport is Unavailable, the following Spaces will also be deemed Unavailable and the related Unavailability Event Deductions shall apply:
- 5.8.1 All Spaces in Elements A1, A2, A4, A6, and A7, as identified in Appendix B of this Schedule F: Payment Mechanism; and
- 5.8.2 All Spaces in Elements D1, D2, D3, D4, and L3, as identified in Appendix B of this Schedule F: Payment Mechanism.
- 5.9 In any Session where the Jury Assembly Waiting Area is Unavailable, all Spaces in Element A4 (as identified in Appendix B of this Schedule F: Payment Mechanism) will also be deemed Unavailable and the related Unavailability Event Deductions shall apply.
- 5.10 In any Session where all Spaces in Elements E1, E2, E3, F2, and F3 are Unavailable, all Spaces in Elements A1, A2, A6, and A7 (as identified in Appendix B of this Schedule F: Payment Mechanism) will be deemed Unavailable and the related Unavailability Event Deductions shall apply.
- 5.11 Notwithstanding the provisions of other Sections in this Part C, in the event that a courtroom becomes Unavailable, the courtroom shall be deemed Unavailable for the Session in which it becomes Unavailable, as well as for all remaining Sessions during that day.
- 5.12 If, in each of any three or more Sessions in any rolling 30 day period the same Space is Unavailable or Unavailable but Used, then, in respect of the third and every subsequent such Unavailability Event (whether or not consecutive):
- (a) The Rectification Time, if applicable, shall not apply for the third and subsequent Sessions in that 30 day period; and
- (b) The Ratchets will be applied to the third and subsequent Unavailable and Unavailable but Used Deduction.

## **6. Rectification**

- 6.1 This Section 6 applies where, in Schedule E Part I: Facilities Management Specifications, a Rectification Time is specified in respect of an Event.
- 6.2 Subject to Section 8 of this Part C, no Failure Event or Unavailability Event shall occur if Project Co successfully carries out Rectification within the specified Rectification Time.

- 6.3 If Rectification is not successfully carried out by Project Co within the specified Rectification Time, a Failure Event or, as the case may be, an Unavailability Event shall occur.
- 6.4 There shall then be a further period (an “Additional Period”) beginning on the expiry of the Rectification Time and of a duration equal to that of the Rectification Time. Project Co shall ensure that Rectification is successfully carried out prior to the expiry of the Additional Period. If Rectification is not successfully carried out by Project Co before the expiry of the Additional Period, a further Failure Event or, as the case may be, Unavailability Event shall occur and a further Additional Period shall commence.
- 6.5 Unless Rectification has been successfully carried out by Project Co prior to the expiry of each Additional Period, a further Failure Event or, as the case may be, Unavailability Event shall occur until such time as Rectification shall have been successfully completed.
- 6.6 The provisions of Sections 6.4 and 6.5 above shall not apply to Failure Events in cases where, if Rectification is not carried out within the Rectification Time, MAG/HMQ’s Representative notifies Project Co’s Representative that MAG/HMQ no longer requires the relevant Service.
- 6.7 When carrying out Rectification, or works of Temporary Repair pursuant to Section 7 below, Project Co shall at all times act in accordance with Applicable Law and any other agreed terms with MAG/HMQ. Failure to do so shall be deemed to be a new Low Failure Event, unless the failure constitutes a breach of Applicable Law, in which case there shall be deemed to be a new High Failure Event.

## **7. Temporary Repairs**

- 7.1 If Project Co informs MAG/HMQ 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 Project Facilities, but that a Temporary Repair can be effected:
  - 7.1.1 MAG/HMQ shall permit Project Co to carry out the Temporary Repair proposed by Project Co unless MAG/HMQ, acting reasonably, consider that use of the relevant Functional Part in the Temporary Repair will (in the case of a Functional Part which has a Prescribed Operational Function) not be in accordance with Good Industry Practice;
  - 7.1.2 MAG/HMQ shall decide if it accepts the Temporary Repair proposed by Project Co no later than 2 business days after ProjectCo submits its proposal to effect such Temporary Repair. During this period, or until such time as MAG/HMQ makes its decision, the Rectification Time for the initial Event shall be suspended and no Failure Event shall be deemed to have occurred because of this suspension.

- 7.1.3 Where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be set, giving Project Co a reasonable period within which to carry out the Permanent Repair (the “Permanent Repair Deadline”). Both MAG/HMQ and Project Co shall act reasonably in seeking to agree what the deadline should be.
- 7.2 During any period beginning at the time when a Temporary Repair has been approved by MAG/HMQ 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.
- 7.3 Subject to Section 6.7 above, if the agreed Temporary Repair is carried out within the specified Rectification Time and the Permanent Repair is completed no later than the Permanent Repair Deadline, no Failure Event or Unavailability Event will occur, and no Deduction may be made, in respect of the Event.
- 7.4 If the Temporary Repair is not carried out within the specified Rectification Time, a Failure Event or, as the case may be, Unavailability Event shall be deemed to occur and the following provisions shall apply:
- 7.4.1 There shall be a further period (an “Additional Period”) beginning on the expiry of the Rectification Time and of duration equal to that of the Rectification Time. Project Co shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the Additional Period. If the Temporary Repair is not successfully carried out by Project Co before the expiry of the Additional Period, a further Failure Event or, as the case may be, Unavailability Event shall occur and a further Additional Period shall commence.
- 7.4.2 Unless the Temporary Repair has been successfully carried out by Project Co prior to the expiry of each Additional Period then, subject to Section 7.4.3 below, a further Failure Event or, as the case may be, Unavailability Event shall occur until such time as the Temporary Repair shall have been successfully completed.
- 7.4.3 If the Temporary Repair is not successfully carried out by Project Co prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for Project Co to carry out a Temporary Repair pursuant to this Section 7 shall cease and Section 7.5 below shall apply.
- 7.5 If the Permanent Repair is not carried out by the Permanent Repair Deadline, a Failure Event or, as the case may be, an Unavailability Event shall be deemed to occur and the provisions of Sections 6.4 and 6.5 above shall apply.

## **8. Repeated Rectification**

Notwithstanding that Project Co completes a Rectification in respect of an Event within the relevant Rectification Time:

8.1 There shall be deemed to be a Low Failure Event on the occurrence of:

8.1.1 The third such Event that arises during the Contract Day; and/or

8.1.2 The fourth such Event which occurs in any consecutive seven day period, provided that:

(a) Each such Event is in connection with the same Service Standard set out in Schedule E Part I: Facilities Management Specifications and occurs in the same Element; and

(b) Whether the Events occur in the same Space or in different Spaces within the same Element there is good reason to believe that the underlying cause of each Event is the same.

## **9. Effect Of Unavailability On Other Deductions**

9.1 Until an Unavailability Event has been Rectified, the Deduction in respect of the Unavailability Event shall be the only Deduction available to be made in respect of any Space in which the Unavailability Event has occurred. No further Deduction shall be made for any subsequent Failure Event which may occur in the relevant Space or Element (as the case may be) during the period until Rectification has been completed. Where MAG/HMQ continues to use a Space which is affected by an Unavailability Event, Project Co shall be obliged to continue to provide in respect of that Space such Services as are normally provided as part of the day to day functioning of that Space<sup>2</sup>. If those Services are not provided in a manner which satisfies the requirements of Schedule E Part I: Facilities Management Specifications, MAG/HMQ shall be entitled to award Service Failure Points in accordance with Part G of this Schedule F: Payment Mechanism where appropriate.

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<sup>2</sup> This might include, for example, cleaning and security services.

## **PART D: ANNUAL REVIEW**

1. The identification of Elements, Spaces, Key Linked Spaces, Ratchets, Rectification Times, Remedial Periods, Unavailability Event Deductions, and Failure Event Deductions shall be reviewed by MAG/HMQ and Project Co at any time if requested by either party but in any event shall be reviewed at least once in every Contract Year. MAG/HMQ and Project Co shall act reasonably and diligently in carrying out the review. For the avoidance of doubt, the parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant Service or the likely magnitude of Deductions. Where proposed changes would result in any such alteration, the matter shall be addressed in accordance with the terms of the Project Agreement.
2. MAG/HMQ and Project Co may in respect of each matter which is the subject of the review either:
  - (a) Agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
  - (b) Agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review.
3. Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1 of this Part D.

## **PART E: FAILURE BY PROJECT CO TO MONITOR OR REPORT**

1. Subject to Sections 1 to 5 inclusive of this Part E, the Monthly Monitoring Report produced by Project Co for any Contract Month shall be the source of the factual information regarding the performance of the Services for the relevant Contract Month for the purposes of calculating the relevant Monthly Service Payment, the number of Service Failure Points awarded, and the number of Warning Notices awarded.
2. If there shall be any error or omission in the Monthly Monitoring Report for any Contract Month, Project Co and MAG/HMQ shall agree to the amendment to the Monthly Monitoring Report. Failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Monthly Monitoring Report, except in the circumstances referred to in Section 7 of this Part E, either party may refer the matter to the Dispute Resolution Procedure.
3. If Project Co fails to monitor or accurately to report an Event, a Failure Event, an Unavailability Event or an Ad Hoc Services Request then, without prejudice to the Deduction to be made in respect of the relevant Failure Event or Unavailability Event (if any), the failure to monitor or report the Event, Failure Event, Unavailability Event or Ad Hoc Services Request shall be deemed to be a new Low Failure Event, unless the circumstances set out in Section 7 of this Part E apply, in which case a new High Failure Event shall be deemed.
4. Where Project Co fails to monitor or accurately report a Failure Event or an Unavailability Event in the circumstances referred to in Section 7 of this Part E, MAG/HMQ shall be deemed to have reasonable cause to require that Project Co shall make available to MAG/HMQ for inspection such records relating to the Project as MAG/HMQ may specify, acting reasonably.
5. Project Co shall, upon submission of a valid invoice, pay to MAG/HMQ a sum equal to the costs reasonably incurred by MAG/HMQ in carrying out any inspection and investigation of records made available pursuant to Section 4 above.
6. In the event that MAG/HMQ's inspection or investigation of records made available pursuant to Section 4 above reveals any further matters of the type referred to in Sections 2 and 3 above, those matters shall be dealt with in accordance with Section 2 or 3 as appropriate and MAG/HMQ shall, in addition, be entitled to make Deductions in respect of any Failure Events or Unavailability Events in the manner prescribed in Parts B and C of this Schedule F: Payment Mechanism. Any such Deductions shall be made from the Monthly Service Payment payable in respect of the Contract Month in which the relevant matters were revealed by MAG/HMQ's investigations or, to the extent that MAG/HMQ is unable to make any further deductions from the Monthly Service Payment in respect of that Contract Month by virtue of Section 1.2 of Part C of this Schedule F: Payment Mechanism, may be carried forward and deducted from Monthly Service Payments due in respect of subsequent Contract Months.

7. For the purposes of Sections 2, 3, and 4 of this Part E, the relevant circumstances are:
  - 7.1 Fraudulent action or inaction; or
  - 7.2 Deliberate misrepresentation; or
  - 7.3 Gross misconduct or incompetence in each case on the part of Project Co or a Project Co Staff.
8. The provisions of this Part E shall be without prejudice to any rights of MAG/HMQ in the Project Agreement.



## **PART F: VOLUME REMUNERATED ITEMS**

### **1. Total Volume Adjustment**

1.1 The Total Volume Adjustment in respect of any Contract Month shall be calculated in accordance with the following formula:

$$TVA = \sum VA$$

where:

1.1.1 **TVA** is the Total Volume Adjustment in respect of the relevant Contract Month

1.1.2  $\sum VA$  is the aggregate of Volume Remunerated Items in respect of the relevant Contract Month

MAG/HMQ may at any time elect to take over direct responsibility for any Volume Remunerated Items. Where such election is made, MAG/HMQ shall reimburse and repay Project Co all outstanding sums due and owing from or as a consequence of the Volume Remunerated Items.

<b>Category</b>	<b>Volume Remunerated Item</b>	<b>Basis for remuneration</b>
Mail/Courier	Stamps, couriers, etc.	At cost
Access control	Security badges (where applicable)	At cost
Food Services	Light refreshments	At a cost consistent with Section 15 of Schedule E (Facilities Management Specifications) of the Project Agreement
Special Operational Events	Openings requiring operational access	In accordance with the costs (index linked) indicated in Appendix C of this Schedule F: Payment Mechanism.

## **PART G: SERVICE FAILURE POINTS**

### **1. Service Failure Points**

- 1.1 Service Failure Points shall be awarded for every Failure Event, as well as for every Unavailability Event deemed or actual which occurs during the Agreement Term unless Deductions relating to such Failure Event(s) or Unavailability Event(s) are disregarded pursuant to Section 4 of Part C. For greater clarity, no Service Failure Points will be awarded prior to the Functionality Date, and no Service Failure Points will be awarded in respect of any failure by Project Co to perform or any poor performance of any affected Service Period Works to the extent such failure relates solely and directly to a particular Relief Event provided, however, for certainty, Deductions will continue to be applied as though Service Failure Points were being awarded.
- 1.2 There shall be no change in the number of Service Failure Points to be awarded during an Initial Operational Phase.
- 1.3 For the avoidance of doubt when awarding Service Failure Points, where more than one Unavailability Event or Failure Event is deemed to have occurred in accordance with Section 6 of Part C, because Rectification is not carried out, the appropriate number of Service Failure Points shall be awarded in respect of each such Unavailability Event or Failure Event, even though they arise from the same circumstances.
- 1.4 For purposes of Section 1.1 and 1.3 to this Part G, an Unavailability Event or Failure Event shall only be deemed to have occurred where an Unavailability Event or a Failure Event has occurred pursuant to Sections 3 and 5 of Part C.

### **2. Service Failure Points and Failure Events**

- 2.1 The number of Service Failure Points which shall be awarded in respect of each Failure Event or Unavailability Event shall be the number of Service Failure Points attributable to the relevant Event as set out in Appendix A.
- 2.2 Where the Performance Monitoring Period associated with the Failure Event in question is a period which begins in a Contract Month and expires in another, the Service Failure Points to be awarded in respect of such Failure Event shall be included in the total number of Service Failure Points for the Contract Month during which the Failure Event occurred comes to an end; or
- 2.3 Where the Performance Monitoring Period referable to the Failure Event in question is a period which begins and ends on the first and last day of a Contract Month or is a period which is wholly contained within the Contract Month or where no specific Performance Monitoring Period is referable to the Failure Event in question, the Service Failure Points to be awarded in respect of such Failure Event shall be included in the total

number of Service Failure Points for that Contract Month.

### **3. Total Monthly Service Failure Points**

3.1 Project Co shall calculate:

3.1.1 The total number of Service Failure Points awarded to each Service provided by the individual Service Providers in each Contract Month

3.1.2 The sum total of all Service Failure Points awarded across all Services provided by all Service Providers in each contract Month; and

3.1.3 The total number of Service Failure Points awarded for Unavailability or Unavailable but Used Events in each Contract Month.

### **4. New Service Providers**

4.1 Without prejudice to Section 2.3 of this Part G, Service Failure Points awarded to a Service Provider which has been replaced by a new Service Provider shall not be taken into account in calculating the total number of Service Failure Points of the new Service Provider in any Contract Month pursuant to Section 3.1.1 of this Part G.

4.2 Service Failure Points which have been awarded to a Service Provider which has been replaced shall not be deducted from the total number of Service Failure Points awarded in respect of all Services in any relevant Contract Month.

## APPENDIX A

### Service Failure Points

Category	SFPs
Low Failure Event	[REDACTED]
Medium Failure Event	[REDACTED]
High Failure Event	[REDACTED]
Low Unavailability Event <sup>3</sup>	[REDACTED]
Medium Unavailability Event <sup>4</sup>	[REDACTED]
High Unavailability Event <sup>4</sup>	[REDACTED]

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<sup>3</sup> This applies whether or not MAG/HMQ continues to make use of the relevant unit.

## APPENDIX B

### Table of Elements and Spaces, Key Linked Spaces, and Unavailability Deductions

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
<b>ELEMENT A1 – FIRST APPEARANCE</b>						
A101	First Appearance Courtroom	A1	•	6	[REDACTED]	A
A102	Courtroom Entry Vestibule	A1	•	6	[REDACTED]	A
A103	Courtroom Sound Lock	A1	•	5	[REDACTED]	A
A104	Interview Room Adjacent to Courtroom	A1	•	4	[REDACTED]	C
A105	Video Remand Booth	A1	•	5	[REDACTED]	A
A106	Interview Room		•	4	[REDACTED]	C
A107	Witness Waiting Room		•	4	[REDACTED]	B
A108	Courtroom Waiting Area	A1	•	3	[REDACTED]	B
A109	Public Telephones (6 phones)		•	0	[REDACTED]	B
A110	Staff washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A111	Crown Resolution Room		•	3	[REDACTED]	C
A112	Office Criminal Duty Counsel Support		•	4	[REDACTED]	J
A113	Office Criminal Duty Counsel Supervisor		•	4	[REDACTED]	J
A114	Office, Legal Aid Application		•	5	[REDACTED]	J

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A115	Office Mental Health Program		•	4	[REDACTED]	J
A116	Courtroom Holding Cell Large	A2	•	5	[REDACTED]	G
A117	Courtroom Holding Cell Sound lock	A2	•	5	[REDACTED]	G
A118	Prisoner Staging Area		•	5	[REDACTED]	G
A119	Technical Equipment Storage Room		•	3	[REDACTED]	D
A120	Audio Visual Service Room		•	3	[REDACTED]	D
A121	Judge's Retiring room		•	4	[REDACTED]	J
A122	Storage Room, Courtrooms		•	2	[REDACTED]	D
A123	Ice Machine Alcove		•	0	[REDACTED]	D
A124	Staff Washrooms, Barrier Free, Private Circulation		•	1	[REDACTED]	P
A125	Copier Room		•	5	[REDACTED]	D
<b>ELEMENT A2 – BAIL COURTS</b>						
A201	Standard Bail Courtroom	A3	•	6	[REDACTED]	A
A202	Large Bail Courtroom	A3	•	6	[REDACTED]	A
A203	Courtroom Entry Vestibule	A3	•	5	[REDACTED]	A
A204	Interview Room Adjacent to Courtroom	A3	•	4	[REDACTED]	C
A205	Video Remand Booth	A3	•	5	[REDACTED]	A
A206	Interview Room		•	4	[REDACTED]	C
A207	Office, Bail Program		•	4	[REDACTED]	J
A208	Courtroom Waiting Area	A3	•	3	[REDACTED]	B
A209	Courtroom Waiting Area Large	A3	•	3	[REDACTED]	B

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
	Bail Courtroom					
A210	Public Telephone (4 phones)		•	0	[REDACTED]	B
A211	Staff washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A212	Courtroom Holding Cell	A4	•	5	[REDACTED]	G
A213	Courtroom Holding Cell, Large	A4	•	5	[REDACTED]	G
A214	Courtroom Holding Cell Sound Lock	A4	•	5	[REDACTED]	G
A215	Audio Visual Service Room		•	3	[REDACTED]	D
A216	Storage Room, Courtrooms		•	2	[REDACTED]	D
A217	Judge's Retiring Room		•	4	[REDACTED]	J
A218	Ice Machine Alcove		•	0	[REDACTED]	D
A219	Staff Washroom, Barrier Free, Private Circulation		•	1	[REDACTED]	P
A220	Copier Room		•	5	[REDACTED]	D
<b>ELEMENT A3 – FAMILY AND CIVIL COURTS</b>						
A301	Family/Civil Courtroom	A5	•	6	[REDACTED]	A
A302	Family/Civil Courtroom, Small	A5	•	6	[REDACTED]	A
A303	Motions Room	A5	•	5	[REDACTED]	A
A304	Courtroom Entry Vestibule	A5	•	6	[REDACTED]	A
A305	Conference/Settlement Room	A5	•	5	[REDACTED]	A
A306	Entry Vestibule, Small Court/Motions/Settlement/Conference	A5	•	5	[REDACTED]	A
A307	Interview Rooms Adjacent to Court/Motions/Settlement	A5	•	4	[REDACTED]	C

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A308	Interview Room		•	4	[REDACTED]	C
A309	Witness Waiting Room		•	4	[REDACTED]	B
A310	Office, Family Duty Counsel Support		•	4	[REDACTED]	J
A311	Office, Family Duty Counsel Supervisor		•	4	[REDACTED]	J
A312	Courtroom Waiting Area	A5	•	4	[REDACTED]	B
A313	Small Courtroom and Motions Room Waiting Area	A5	•	4	[REDACTED]	B
A314	Conference/Settlement Waiting	A5	•	4	[REDACTED]	B
A315	Public Telephone (5 phones)		•	0	[REDACTED]	B
A316	Staff Washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A317	Technical Equipment Storage Room		•	3	[REDACTED]	D
A318	Courtroom Holding Cell		•	5	[REDACTED]	G
A319	Judges Retiring Room		•	4	[REDACTED]	J
A320	Audio Visual Service Room		•	3	[REDACTED]	D
A321	Storage Room, Courtrooms		•	2	[REDACTED]	D
A322	Ice Machine Alcove		•	0	[REDACTED]	D
A323	Staff Washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A324	Copier Room		•	5	[REDACTED]	D
A325	Video Remand Booth		•	4	[REDACTED]	A
<b>ELEMENT A4 – JURY COURTS</b>						
A401	Large Jury Courtroom	A6	•	6	[REDACTED]	A



Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A402	Large Jury Courtroom, One Judge Dais	A6	•	6	[REDACTED]	A
A403	Standard Jury Courtroom	A6	•	6	[REDACTED]	A
A404	Courtroom Entry Vestibule	A6	•	5	[REDACTED]	A
A405	Courtroom Exit Sound Lock	A6	•	5	[REDACTED]	A
A406	Interview Room Adjacent to Courtroom	A6	•	4	[REDACTED]	C
A407	Courtroom Waiting Area, Large Jury Courtroom	A6	•	4	[REDACTED]	B
A408	Courtroom Waiting Area	A6	•	4	[REDACTED]	B
A409	Public Telephone (7 phones)		•	0	[REDACTED]	B
A410	Staff Washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A411	Technical Equipment Storage Room		•	3	[REDACTED]	D
A412	Courtroom Holding Cell, Large		•	5	[REDACTED]	G
A413	Courtroom Holding Cell		•	5	[REDACTED]	G
A414	Jury Room		•	5	[REDACTED]	D
A415	Simultaneous Interpretation room		•	3	[REDACTED]	D
A416	Remote Video Testimony Room	A7	•	5	[REDACTED]	E
A417	Child Waiting and Play Room	A7	•	4	[REDACTED]	E
A418	Video Monitor Storage Closet	A7	•	3	[REDACTED]	E
A419	Washroom, Barrier Free	A7	•	2	[REDACTED]	P
A420	Child Witness Entry Vestibule	A7	•	4	[REDACTED]	E
A421	Judges Retiring Room, Barrier Free		•	4	[REDACTED]	J

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A422	Storage Room, Courtrooms		•	2	[REDACTED]	D
A423	Ice Machine Alcove		•	0	[REDACTED]	D
A424	Staff Washroom, Barrier Free, Private Circulation		•	1	[REDACTED]	P
A425	Audio Visual Service Room		•	3	[REDACTED]	D
<b>ELEMENT A5 – JURY ASSEMBLY</b>						
A501	Waiting Area		•	6	[REDACTED]	F
A502	Registration Station		•	5	[REDACTED]	F
A503	Coat Closet		•	1	[REDACTED]	F
A504	Convenience Lockers		•	3	[REDACTED]	F
A505	Public Telephone		•	0	[REDACTED]	F
A506	Vending Machines		•	1	[REDACTED]	F
A507	Coffee Servery		•	1	[REDACTED]	F
A508	Bookshelves		•	1	[REDACTED]	F
A509	Washroom, Barrier Free, Individual		•	3	[REDACTED]	P
A510	Washroom		•	3	[REDACTED]	P
<b>ELEMENT A6 – YOUTH COURTS</b>						
A601	First Appearance Courtroom	A8	•	6	[REDACTED]	A
A602	Standard Non-Jury Courtroom	A8	•	6	[REDACTED]	A
A603	Courtroom Entry Vestibule	A8	•	6	[REDACTED]	A
A604	Courtroom Exit Sound Lock	A8	•	5	[REDACTED]	A
A605	Video Remand Booth	A8	•	5	[REDACTED]	A

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A606	Interview Room Adjacent to Courtroom	A8	•	4	[REDACTED]	C
A607	Interview Room		•	4	[REDACTED]	C
A608	Crown Resolution Room		•	3	[REDACTED]	C
A609	Office, Youth Probation		•	4	[REDACTED]	J
A610	Courtroom Waiting Area, First Appearance Court	A8	•	4	[REDACTED]	B
A611	Courtroom Waiting Area	A8	•	4	[REDACTED]	B
A612	Public Telephone (3 phones)		•	0	[REDACTED]	B
A613	Staff washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A614	Courtroom Holding Cell, First Appearance Court	A9	•	5	[REDACTED]	G
A615	Courtroom Holding Cell	A9	•	5	[REDACTED]	G
A616	Courtroom Holding Cell Sound Lock	A9	•	5	[REDACTED]	G
A617	Judge's Retiring Room		•	4	[REDACTED]	J
A618	Storage Room, Courtrooms		•	2	[REDACTED]	D
A619	Audio Visual Service Room		•	3	[REDACTED]	D
A620	Ice Machine Alcove		•	0	[REDACTED]	D
A621	Staff Washrooms, Barrier Free, Private Circulation		•	1	[REDACTED]	P
A622	Copier Room		•	5	[REDACTED]	D
<b>ELEMENT A7 – STANDARD CRIMINAL COURTS</b>						
A701	Standard Non-Jury Courtroom	A10	•	6	[REDACTED]	A

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A702	Large Non-Jury Courtroom	A10	•	6	[REDACTED]	A
A703	Motions Room	A10	•	6	[REDACTED]	A
A704	Conference/ Settlement Room	A10	•	6	[REDACTED]	A
A705	Courtroom Entry Vestibule	A10	•	6	[REDACTED]	A
A706	Motions Room Entry Vestibule	A10	•	6	[REDACTED]	A
A707	Conference/Settlement Entry Vestibule	A10	•	6	[REDACTED]	A
A708	Interview Room Adjacent to Court/Motions/Conference Rooms	A10	•	4	[REDACTED]	C
A709	Interview Room		•	4	[REDACTED]	C
A710	Police Witness Waiting Room		•	4	[REDACTED]	B
A711	Courtroom Waiting Area	A10	•	4	[REDACTED]	B
A712	Courtroom Waiting Area, Large Courtroom	A10	•	4	[REDACTED]	B
A713	Public Telephone (6 phones)		•	0	[REDACTED]	B
A714	Staff Washroom, Barrier Free, Public Circulation		•	1	[REDACTED]	P
A715	Remote Video Testimony Room	A11	•	5	[REDACTED]	E
A716	Child Waiting and Play Room	A11	•	4	[REDACTED]	E
A717	Video Monitor Storage Closet	A11	•	2	[REDACTED]	E
A718	Washroom, Barrier Free	A11	•	5	[REDACTED]	P
A719	Child Witness Entry Vestibule	A11	•	5	[REDACTED]	E
A720	Technical Equipment Storage Room		•	2	[REDACTED]	D
A721	Courtroom Holding Cell		•	5	[REDACTED]	G

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
A722	Judges Retiring Room		•	4	[REDACTED]	J
A723	Judges Retiring Room, Barrier Free		•	4	[REDACTED]	J
A724	Storage Room, Courtrooms		•	2	[REDACTED]	D
A725	Audio Visual Service Room		•	3	[REDACTED]	D
A726	Ice Machine Alcove		•	0	[REDACTED]	D
A727	Staff Washroom, Barrier Free Private Circulation		•	1	[REDACTED]	P
A728	Copier Room			5	[REDACTED]	D
<b>ELEMENT A8 – ADULT PROBATION AND PAROLE</b>						
A801	Office, Probation and Parole Officer		•	4	[REDACTED]	J
A802	Office, CSR/ESRO		•	4	[REDACTED]	J
A803	Workstation, Secretary		•	4	[REDACTED]	J
A804	Secure Interview Room		•	4	[REDACTED]	I
A805	Reception Counter		•	4	[REDACTED]	I
A806	Waiting Area		•	4	[REDACTED]	I
A807	Coat Closet		•	0	[REDACTED]	K
A808	Copier/Printer/Fax/Shredder		•	4	[REDACTED]	K
A809	File Storage Room		•	4	[REDACTED]	K
A810	Server Room		•	4	[REDACTED]	K
A811	Staff Washroom, Barrier Free		•	1	[REDACTED]	P
<b>ELEMENT B1 – SUPERIOR COURT</b>						
B101	Chambers, Justice		•	5	[REDACTED]	J

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
B102	Chambers, Justice, Barrier Free		•	5	[REDACTED]	J
B103	Chambers, Master		•	5	[REDACTED]	J
<b>ELEMENT B2 – ONTARIO COURT</b>						
B201	Chambers, Justice		•	5	[REDACTED]	J
B202	Chambers, Justice, Barrier Free		•	5	[REDACTED]	J
B203	Office, Justice of the Peace		•	5	[REDACTED]	J
<b>ELEMENT B3 – SC JUDICIAL SUPPORT</b>						
B301	Workstation, Secretary/CMM support		•	4	[REDACTED]	J
B302	Workstation Law Clerk/Student		•	4	[REDACTED]	J
B303	Counter Station		•	4	[REDACTED]	I
B304	Visitor Waiting Area		•	4	[REDACTED]	I
B305	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
B306	File Storage Area (4 Cabinets)		•	4	[REDACTED]	K
B307	Bookshelves		•	2	[REDACTED]	K
B308	Supplies Cabinet		•	2	[REDACTED]	K
B309	Shared Printer Station		•	4	[REDACTED]	K
B310	Fax Station		•	4	[REDACTED]	K
B311	Copier/Shredder Room		•	4	[REDACTED]	K
B312	Meeting Room/Lounge, Superior Court		•	4	[REDACTED]	M
B313	Kitchenette		•	4	[REDACTED]	M
<b>ELEMENT B4 – OC JUDICIAL SUPPORT</b>						

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
B401	Workstation, Secretary (4 spaces)		•	4	[REDACTED]	J
B402	Counter Station		•	4	[REDACTED]	I
B403	Visitor Waiting Area		•	4	[REDACTED]	I
B404	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
B405	File Storage Area (6 Cabinets)		•	4	[REDACTED]	K
B406	Bookshelves		•	2	[REDACTED]	K
B407	Supplies Cabinet		•	2	[REDACTED]	K
B408	Shared Printer Station		•	4	[REDACTED]	K
B409	Fax Station		•	4	[REDACTED]	K
B410	Copier/Shredder Room		•	4	[REDACTED]	K
B411	Meeting Room/Lounge, Ontario Court		•	4	[REDACTED]	M
B412	Kitchenette		•	4	[REDACTED]	M
B413	Meeting/Lunchroom, Justices of the Peace		•	2	[REDACTED]	M
B414	Washroom, Justice of the Peace		•	2	[REDACTED]	P
<b>ELEMENT B5 – JUDICIAL SUPPORT SERVICES</b>						
B501	Judicial Library, Shared		•	4	[REDACTED]	M
B502	Staff Lunchroom, Judicial Support Staff		•	2	[REDACTED]	O
B503	Staff Washroom, Women		•	2	[REDACTED]	P
B504	Staff Washroom, Unisex, Barrier Free		•	2	[REDACTED]	P
<b>ELEMENT B6 – JUDICIAL ENTRANCE</b>						

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
B601	Judicial Entrance Vestibule		•	5	[REDACTED]	N
<b>ELEMENT C1 – MANAGEMENT</b>						
C101	Office, Manager, Court Operations		•	5	[REDACTED]	J
C102	Workstation, Budget Analyst		•	4	[REDACTED]	J
C103	Workstation, Administrative Assistant		•	4	[REDACTED]	J
C104	Visitor Waiting Area		•	2	[REDACTED]	I
C105	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C106	File Storage Area (6 Cabinets)		•	5	[REDACTED]	K
C107	Fax Station		•	4	[REDACTED]	K
C108	Copier/Supplies/Printer		•	4	[REDACTED]	K
C109	Meeting Room		•	1	[REDACTED]	M
<b>ELEMENT C2 – COURT SUPPORT</b>						
C201	Office, Supervisor		•	5	[REDACTED]	J
C202	Workstation, Regional Systems Officer (2 spaces)		•	4	[REDACTED]	J
C203	Workstation, Business Support Analyst		•	4	[REDACTED]	J
C204	Workstation, Clerical (2 spaces)		•	4	[REDACTED]	J
C205	Workstation, Tape Custodian (2 spaces)		•	4	[REDACTED]	J
C206	Workstation, Court Reporter (40 spaces)		•	3	[REDACTED]	J
C207	Miscellaneous Storage (12 cabinets)		•	4	[REDACTED]	K
C208	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K



Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
C209	Fax Station		•	4	[REDACTED]	K
C210	Shared Printer Station (2 stations)		•	4	[REDACTED]	K
C211	Work Area, Tape Preparation and Duplication		•	4	[REDACTED]	K
C212	Secure Storage Room, Tapes and Logbooks		•	5	[REDACTED]	K
C213	Supply Room		•	4	[REDACTED]	K
C214	Copier/Supplies/Shredder room		•	4	[REDACTED]	K
C215	Secure Storage Room, Active Exhibits		•	5	[REDACTED]	K
<b>ELEMENT C3 – MEETING ROOMS</b>						
C301	Meeting/Training Room		•	3	[REDACTED]	M
C302	Washroom, Barrier Free, Unisex		•	2	[REDACTED]	P
C303	Staff Washroom, Male and Female		•	1	[REDACTED]	P
C304	Coat Closet, Meeting Rooms		•	0	[REDACTED]	K
<b>ELEMENT C4 – CRIMINAL</b>						
C401	Office, Supervisor		•	5	[REDACTED]	J
C402	Workstation, Office Staff (23 spaces)		•	4	[REDACTED]	J
C403	Workstation, Clerk/Registrar (28 spaces)		•	3	[REDACTED]	J
C404	Counter Station (4 stations)		•	4	[REDACTED]	I
C405	Public Waiting Area, Sitting		•	4	[REDACTED]	I
C406	Public Waiting Area, Standing		•	4	[REDACTED]	I
C407	Convenience Copier, Public Use		•	4	[REDACTED]	I

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
C408	Closet, Clerk/Registrar Gowns		•	1	[REDACTED]	K
C409	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C410	File Cabinets, Pre-Court Files (8 cabinets)		•	5	[REDACTED]	K
C411	File Storage, High Density Mobile Units (25 units)		•	5	[REDACTED]	K
C412	File Storage, Shelving, Dockets/Binders (6 bays)		•	5	[REDACTED]	K
C413	File Storage, Shelving, Binders (3 bays)		•	5	[REDACTED]	K
C414	File Storage, Lateral Cabinets (5 cabinets)		•	5	[REDACTED]	K
C415	Miscellaneous Storage (14 cabinets)		•	4	[REDACTED]	K
C416	File Storage Work Area		•	4	[REDACTED]	K
C417	Fax Station		•	4	[REDACTED]	K
C418	Shared Printer Station		•	4	[REDACTED]	K
C419	Secured Storage Room		•	4	[REDACTED]	K
C420	Copier/Shredder Room		•	4	[REDACTED]	K
<b>ELEMENT C5 – CRIMINAL INTAKE</b>						
C501	Intake Court, Primary		•	5	[REDACTED]	I
C502	Intake Court, Secondary		•	5	[REDACTED]	I
C503	File Cabinets, Miscellaneous (5 cabinets)		•	4	[REDACTED]	K
C504	Public Waiting Area, Sitting		•	5	[REDACTED]	I

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
<b>ELEMENT C6 – CIVIL AND ENFORCEMENT</b>						
C601	Office, Supervisor		•	5	[REDACTED]	J
C602	Office Mediation Coordinator		•	4	[REDACTED]	J
C603	Workstation, Office Staff (19 spaces)		•	4	[REDACTED]	J
C604	Workstation, Enforcement Officer (4 spaces)		•	4	[REDACTED]	J
C605	Workstation, Clerk/Registrar (13 spaces)		•	3	[REDACTED]	J
C606	Counter Station (7 stations)		•	4	[REDACTED]	I
C607	Form Filling Area		•	4	[REDACTED]	I
C608	Public Waiting Area, Sitting		•	4	[REDACTED]	I
C609	Public Waiting Area, Standing		•	4	[REDACTED]	I
C610	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C611	Closet, Clerk/Registrar Gowns		•	1	[REDACTED]	K
C612	Shared Printer Station		•	4	[REDACTED]	K
C613	Fax Station		•	4	[REDACTED]	K
C614	File Storage, High Density Mobile Units (54 units)		•	5	[REDACTED]	K
C615	File Storage, Enforcement, Vertical Cabinets (12 cabinets)		•	4	[REDACTED]	K
C616	File Storage Work Area		•	4	[REDACTED]	K
C617	File Cabinets, Miscellaneous (9 cabinets)		•	4	[REDACTED]	K
C618	Copier/Shredder Room		•	4	[REDACTED]	K

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
C619	Secure Storage Room		•	4	[REDACTED]	K
<b>ELEMENT C7 – FAMILY</b>						
C701	Office, Supervisor		•	5	[REDACTED]	J
C702	Workstation, Office Staff (19 spaces)		•	4	[REDACTED]	J
C703	Workstation Clerk/Registrar (9 spaces)		•	3	[REDACTED]	J
C704	Counter Station (7 stations)		•	4	[REDACTED]	I
C705	Form Filling Area		•	4	[REDACTED]	I
C706	Public Waiting Area Sitting		•	4	[REDACTED]	I
C707	Public Waiting Area, Standing		•	4	[REDACTED]	I
C708	Reference Area, Index and Books		•	4	[REDACTED]	I
C709	Reference Area, Public Use Convenience Copier		•	4	[REDACTED]	I
C710	Reference Area, Lawyers Filing Area		•	4	[REDACTED]	I
C711	Reference Area, Public Use Computers		•	4	[REDACTED]	I
C712	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C713	Closet, Clerk/Registrar Gowns		•	1	[REDACTED]	K
C714	Shared Printer Station (2 stations)		•	4	[REDACTED]	K
C715	Fax Station		•	4	[REDACTED]	K
C716	File Storage Area, Mechanical Units (16 units)		•	5	[REDACTED]	K
C717	File Storage, High Density Mobile Units (30 units)		•	5	[REDACTED]	K

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
C718	File Cabinets, Miscellaneous Storage (19 cabinets)		•	5	[REDACTED]	K
C719	File Work Area, Central, Family		•	4	[REDACTED]	K
C720	Secure Storage Room		•	4	[REDACTED]	K
C721	Copier/Shredder Room		•	4	[REDACTED]	K
C722	Office, Family Duty Counsel Screening		•	4	[REDACTED]	J
<b>ELEMENT C8 – FAMILY LAW INFORMATION</b>						
C801	Office, Information and Referral Coordinator		•	5	[REDACTED]	J
C802	Office, Advice Counsel		•	5	[REDACTED]	J
C803	Office, Mediator		•	5	[REDACTED]	J
C804	Counter Station (3 stations)		•	5	[REDACTED]	I
C805	Form Storage (4 cabinets)		•	5	[REDACTED]	K
C806	Form Filling Carrel (4 carrels)		•	5	[REDACTED]	I
C807	Public Computer Terminal Carrel (2 carrels)		•	5	[REDACTED]	I
C808	Video Viewing Area / Child Play Area		•	4	[REDACTED]	I
C809	Visitor Waiting Area, Sitting		•	5	[REDACTED]	I
C810	Visitor Waiting Area, Standing		•	5	[REDACTED]	I
C811	Shared Printer Station		•	4	[REDACTED]	K
C812	Fax Station		•	4	[REDACTED]	K
C813	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C814	Copier/Supplies Room		•	4	[REDACTED]	K

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
<b>ELEMENT C9 – SC INFORMATION</b>						
C901	Information Counter		•	3	[REDACTED]	I
C902	Form Filling Area, Brochure and Forms Racks		•	3	[REDACTED]	I
<b>ELEMENT C10 – SC TRIAL COORDINATION</b>						
C1001	Workstation, Trial Coordinator (5 spaces)		•	5	[REDACTED]	J
C1002	File Storage Area (6 cabinets)		•	5	[REDACTED]	K
C1003	Counter Station (2 stations)		•	5	[REDACTED]	I
C1004	Public Waiting Area		•	5	[REDACTED]	I
C1005	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C1006	Shared Printer Station		•	4	[REDACTED]	K
C1007	Fax Station		•	5	[REDACTED]	K
C1008	Copier/Shredder Room		•	4	[REDACTED]	K
<b>ELEMENT C11 – OC TRIAL COORDINATION</b>						
C1101	Office, Trial Coordinator		•	5	[REDACTED]	J
C1102	Workstation, Trial Coordinator (5 spaces)		•	5	[REDACTED]	J
C1103	File Storage Area (3 cabinets)		•	5	[REDACTED]	K
C1104	Counter Station (2 stations)		•	5	[REDACTED]	I
C1105	Public Waiting Area		•	5	[REDACTED]	I
C1106	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
C1107	Shared Printer Station		•	4	[REDACTED]	K
C1108	Fax Station		•	4	[REDACTED]	K

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
C1109	Copier/Shredder Room		•	4	[REDACTED]	K
<b>ELEMENT C12 – STAFF SUPPORT FACILITIES</b>						
C1201	CSO Rest/Lunch Room		•	3	[REDACTED]	O
C1202	CSO Lockers, Men		•	3	[REDACTED]	O
C1203	CSO Lockers, Women		•	3	[REDACTED]	O
C1204	Staff Lunchroom, Court Services		•	2	[REDACTED]	O
C1205	Washroom, Barrier Free, Unisex		•	3	[REDACTED]	P
C1206	Staff Washroom, Women		•	2	[REDACTED]	P
C1207	Staff Washroom, Men		•	2	[REDACTED]	P
C1208	First Aid/Rest Room		•	3	[REDACTED]	O
<b>ELEMENT D1 – PRISONER TRANSPORT</b>						
D101	Office, Police Bail		•	5	[REDACTED]	J
D102	Security, Equipment Room		•	4	[REDACTED]	H
D103	Sallyport		•	6	[REDACTED]	G
D104	Sallyport Holding Cell (Option 2 only)		•	6	[REDACTED]	G
D105	Sallyport Holding Cell (Option 2 only)		•	6	[REDACTED]	G
D106	Sallyport Staging Area/Elevator Vestibule (Option 2 only)		•	6	[REDACTED]	G
D107	Identification Room		•	4	[REDACTED]	H
D108	Search Room		•	4	[REDACTED]	H
D109	Admitting Area with Lockers		•	4	[REDACTED]	H

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
<b>ELEMENT D2 – ADULT HOLDING</b>						
D201	Group Holding Cell, Men		•	5	[REDACTED]	G
D202	Single Holding Cell, Man		•	5	[REDACTED]	G
D203	Group Holding Cell, Women		•	5	[REDACTED]	G
D204	Single Holding Cell, Woman		•	5	[REDACTED]	G
D205	Segregated Single Holding Cell, Adult, Barrier Free		•	5	[REDACTED]	G
D206	Vestibule, Segregated Cell		•	5	[REDACTED]	G
D207	In-Custody Emergency Shower		•	5	[REDACTED]	H
<b>ELEMENT D3 – YOUTH HOLDING</b>						
D301	Group Holding Cell, Boys		•	5	[REDACTED]	G
D302	Single Holding Cell, Boy		•	5	[REDACTED]	G
D303	Group Holding Cell, Girls		•	5	[REDACTED]	G
D304	Single Holding Cell, Girl		•	5	[REDACTED]	G
D305	Segregated Single Holding Cell, Youth Barrier Free		•	5	[REDACTED]	G
D306	Vestibule, Segregated Cell		•	5	[REDACTED]	G
<b>ELEMENT D4 – CONTROL AND CONSULTING</b>						
D401	Shared Office, Sergeant		•	4	[REDACTED]	J
D402	Gun Storage and Loading Station		•	5	[REDACTED]	H
D403	Security Control Room		•	6	[REDACTED]	H
D404	Equipment Room, Security Control		•	5	[REDACTED]	H



Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
D405	Staff Washroom, Barrier Free		•	3	[REDACTED]	P
D406	Storage Room		•	3	[REDACTED]	K
D407	Lawyer/Prisoner Consulting Cubicle Adult Male		•	5	[REDACTED]	H
D408	Lawyer/Prisoner Consulting Cubicle, Adult and Youth Female		•	5	[REDACTED]	H
D409	Lawyer/Prisoner Consulting Cubicle, Youth		•	5	[REDACTED]	H
D410	Lawyer/Prisoner Consulting, Barrier Free		•	5	[REDACTED]	H
D411	Waiting Area, Lawyers		•	4	[REDACTED]	H
D412	Waiting Area, Special Constables		•	4	[REDACTED]	H
D413	In-Custody Video Room		•	4	[REDACTED]	H
D414	Reception Desk		•	5	[REDACTED]	H
<b>ELEMENT D5 – POLICE STAFF AND SUPPORT</b>						
D501	Lunch/Parade/Training Room		•	3	[REDACTED]	O
D502	Police Emergency Shower		•	3	[REDACTED]	H
D503	Locker Room, Uniformed Staff, Men		•	3	[REDACTED]	O
D504	Staff Washroom, Men		•	3	[REDACTED]	P
D505	Staff Washroom, Women		•	3	[REDACTED]	P
D506	Locker Room, Uniformed Staff, Women		•	3	[REDACTED]	O
D507	Housekeeping Closet		•	1	[REDACTED]	H
<b>ELEMENT E1 – BUREAU CASE MANAGEMENT</b>						

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
E101	Office, Staff Sergeant		•	5	[REDACTED]	J
E102	Shared Office, Bail Safety		•	4	[REDACTED]	J
E103	Shared Office, Sergeants		•	4	[REDACTED]	J
E104	Workstation, Police Officer		•	4	[REDACTED]	J
E105	Workstation, Support Staff		•	4	[REDACTED]	J
E106	Workstation, Case Management Clerk		•	4	[REDACTED]	J
E107	Counter Station/Mail Sorting		•	3	[REDACTED]	I
E108	Waiting Area		•	3	[REDACTED]	I
E109	File Storage Area Criminal (24 cabinets)		•	3	[REDACTED]	K
E110	File Storage Area POA (10 cabinets)		•	3	[REDACTED]	K
E111	File Sorting Area		•	3	[REDACTED]	K
E112	Interview Room		•	3	[REDACTED]	I
<b>ELEMENT E2 – VIDEO DISCLOSURE</b>						
E201	Workstation, Video Disclosure (3 spaces)		•	5	[REDACTED]	J
E202	Workstation, Student (2 spaces)		•	3	[REDACTED]	J
E203	Video Copying Area		•	3	[REDACTED]	K
E204	Holding Area, Video Tapes		•	3	[REDACTED]	K
E205	Tape Eraser/Blank Tape Storage Room		•	3	[REDACTED]	K
E206	Storage, Video Media		•	4	[REDACTED]	K
<b>ELEMENT E3 – BUREAU SUPPORT</b>						

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
E301	Copier/Supplies Room		•	4	[REDACTED]	K
E302	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
E303	Shared Printer Station		•	4	[REDACTED]	K
E304	Fax Station		•	4	[REDACTED]	K
E305	Server Room, Voice and Data		•	6	[REDACTED]	K
E306	Washroom, Barrier Free, Unisex		•	2	[REDACTED]	P
E307	Staff Washroom and Lockers, Men		•	1	[REDACTED]	P
E308	Staff Washroom and Lockers, Women		•	1	[REDACTED]	P
E309	Staff Lunchroom		•	2	[REDACTED]	O
<b>ELEMENT F1 – PROSECUTORS</b>						
F101	Office, Crown Attorney, Barrier Free		•	5	[REDACTED]	J
F102	Office, Deputy Crown Attorney		•	5	[REDACTED]	J
F103	Office, Assistant Crown Attorney		•	5	[REDACTED]	J
F104	Office, Provincial Prosecutor		•	4	[REDACTED]	J
F105	Shared Printer Station (6 stations)		•	3	[REDACTED]	K
<b>ELEMENT F2 – CROWN CASE MANAGEMENT</b>						
F201	Workstation, Paralegal (8 spaces)		•	4	[REDACTED]	J
F202	Workstation, Secretary (8 spaces)		•	4	[REDACTED]	J
F203	Workstation, Disclosure Clerk (4 spaces)		•	4	[REDACTED]	J
F204	Workstation, Assistant Crown Attorney (8 spaces)		•	4	[REDACTED]	J

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
F205	Workstation, Temporary Use (6 spaces)		•	3	[REDACTED]	J
F206	File Storage Area (8 Cabinets)		•	3	[REDACTED]	K
F207	Reception Counter and Video Pickup Area		•	5	[REDACTED]	I
F208	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
F209	Shared Printer Station		•	3	[REDACTED]	K
F210	Fax Station		•	3	[REDACTED]	K
F211	Copier Room		•	3	[REDACTED]	K
F212	Interview Room		•	3	[REDACTED]	I
F213	Meeting Room		•	3	[REDACTED]	M
<b>ELEMENT F3 – CROWN SUPPORT</b>						
F301	Office, Office Manager		•	4	[REDACTED]	J
F302	Workstation, Secretary (14 spaces)		•	4	[REDACTED]	J
F303	Workstation, Law Student (3 spaces)		•	4	[REDACTED]	J
F304	File Storage Area, Active Files (15 cabinets)		•	4	[REDACTED]	K
F305	File Storage Area, Crown Office, High Density Mobile (30 cabinets)		•	4	[REDACTED]	K
F306	File Storage Area, 240 Banker Boxes, High Density Mobile		•	3	[REDACTED]	K
F307	File Storage Area, Recently Closed Files (5 cabinets)		•	3	[REDACTED]	K
F308	Shared Printer Station (3 stations)		•	3	[REDACTED]	K
F309	Fax Station (2 stations)		•	3	[REDACTED]	K

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
F310	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
F311	Counter Station (3 stations)		•	4	[REDACTED]	I
F312	Visitor Waiting Area		•	3	[REDACTED]	I
F313	Interview Room		•	3	[REDACTED]	I
F314	Copier/Supplies Room		•	3	[REDACTED]	K
F315	Meeting Room/Library (2,000 volumes)		•	3	[REDACTED]	M
F316	Video Equipment Storage Room		•	3	[REDACTED]	K
F317	Staff Lunchroom		•	2	[REDACTED]	O
F318	Washroom, Barrier Free, Unisex		•	3	[REDACTED]	P
F319	Staff Washroom, Men		•	1	[REDACTED]	P
F320	Staff Washroom, Women		•	1	[REDACTED]	P
<b>ELEMENT G1 – VWAP CLIENT SERVICES</b>						
			•			J
G101	Office, Manager		•	4	[REDACTED]	J
G102	Workstation, Receptionist		•	4	[REDACTED]	J
G103	Workstation, Administrative Assistant (2 spaces)		•	3	[REDACTED]	J
G104	Workstation, Volunteer (4 spaces)		•	3	[REDACTED]	J
G105	Shared Printer Station		•	4	[REDACTED]	K
G106	Fax Station		•	4	[REDACTED]	K
G107	File Cabinets, Miscellaneous (4 cabinets)		•	4	[REDACTED]	K
G108	Child Waiting/Play Area		•	4	[REDACTED]	I

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
G109	Coat Closet, Staff and Visitors		•	0	[REDACTED]	K
G110	Visitor Waiting Area		•	4	[REDACTED]	I
G111	Entry Vestibule		•	3	[REDACTED]	I
G112	Copier/Supplies Room		•	4	[REDACTED]	K
G113	Meeting Room		•	3	[REDACTED]	M
G114	Interview Room		•	3	[REDACTED]	I
G115	Client Washroom Barrier Free		•	4	[REDACTED]	P
<b>ELEMENT G2 – VWAP STAFF AREA</b>						
G201	Office, Service Worker		•	4	[REDACTED]	J
G202	File Storage Area (20 cabinets)		•	3	[REDACTED]	K
G203	Shared Printer Station		•	3	[REDACTED]	K
G204	Fax Station		•	3	[REDACTED]	K
G205	Staff Washroom, Barrier Free, Unisex		•	3	[REDACTED]	P
G206	Staff Washroom, Women		•	1	[REDACTED]	P
G207	Staff Lunchroom		•	2	[REDACTED]	O
<b>ELEMENT H1 – COUNSEL LOUNGE</b>						
H101	Lounge		•	3	[REDACTED]	M
H102	Robing Room, Men		•	3	[REDACTED]	M
H103	Robing Room, Women		•	3	[REDACTED]	M
H104	Washroom, Barrier Free, Unisex		•	3	[REDACTED]	P
H105	Washroom, Men		•	3	[REDACTED]	P
H106	Washroom, Women		•	3	[REDACTED]	P

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
<b>ELEMENT H2 – LAW LIBRARY</b>						
H201	Office, Librarian		•	3	[REDACTED]	J
H202	Shared Printer Station (4 stations)		•	3	[REDACTED]	K
H203	Photocopier Area		•	3	[REDACTED]	M
H204	Library Bookcases		•	3	[REDACTED]	M
H205	Study Carrels (6 carrels)		•	3	[REDACTED]	M
H206	Library Study Area		•	3	[REDACTED]	M
<b>ELEMENT J1 – ENTRANCE LOBBY</b>						
J101	Lobby		•	6	[REDACTED]	N
J102	Information Kiosk		•	3	[REDACTED]	N
J103	Public Telephones (7 phones)		•	0	[REDACTED]	N
J104	Queuing Area, Security Screening		•	6	[REDACTED]	N
J105	Security Screening		•	6	[REDACTED]	N
J106	Building Security Control Centre		•	6	[REDACTED]	N
<b>ELEMENT J2 – FOOD OUTLET</b>						
J201	Food Preparation		•	3	[REDACTED]	N
J202	Public/Staff Seating Area		•	3	[REDACTED]	N
<b>ELEMENT K1 – INFORMATION TECHNOLOGY</b>						
K101	Communications Service Entry Room		•	6	[REDACTED]	K
K102	Telephone/Network Equipment Room		•	6	[REDACTED]	K
K103	Server Room		•	6	[REDACTED]	K

Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
<b>ELEMENT K2 – PROGRAM STORAGE</b>						
K201	Secure Storage, Inactive Tapes and Logbooks, Shelving, Bankers Boxes		•	4	[REDACTED]	L
K202	Inactive Records, File Cabinets		•	1	[REDACTED]	L
K203	Inactive Records, 94 High Density Mobile Cabinets		•	1	[REDACTED]	L
K204	Inactive Records, Shelving, Bankers Boxes		•	1	[REDACTED]	L
K205	Secure Storage. Inactive Search Warrants		•	4	[REDACTED]	L
K206	Enforcement Storage		•	4	[REDACTED]	L
K207	Bulk Stationery Storage, Court Services		•	2	[REDACTED]	L
K208	Inactive Exhibit Storage		•	1	[REDACTED]	L
K209	Furniture Storage		•	2	[REDACTED]	L
K210	Inactive Records, Crown Attorney		•	1	[REDACTED]	L
K211	Inactive Records, Victim Witness		•	1	[REDACTED]	L
<b>ELEMENT K3 – BUILDING OPERATIONS</b>						
K301	Central Mail Sorting Room		•	5	[REDACTED]	Q
K302	Central Mail Holding Room		•	5	[REDACTED]	Q
K303	Garbage Disposal Area		•	4	[REDACTED]	Q
K304	Shipping/Receiving Area		•	3	[REDACTED]	Q
K305	Shipping/Receiving Office		•	3	[REDACTED]	Q



Space Code	Space Name	Key Linked Space	Net Square Metres per Space	Ranking	Unavailability Deduction per Space per Session	Prescribed Operational Function
K306	Loading Dock		•	3	[REDACTED]	Q
<b>ELEMENT L1 – JUDICIAL VEHICLES</b>						
L101	Parking Stalls, Judicial Officer (47 stalls)		•	4	[REDACTED]	R
L102	Parking Stall, Judicial Officer, Barrier Free (5 stalls)		•	4	[REDACTED]	R
L103	Parking Stall, Visiting Judicial Officer (2 stalls)		•	4	[REDACTED]	R
<b>ELEMENT L2 – STAFF VEHICLES</b>						
L201	Enforcement Officer's Stall (4 stalls)		•	3	[REDACTED]	R
L202	Barrier Free Staff Stall (2 stalls)		•	3	[REDACTED]	R
L203	Unassigned Contingency Stall (4 stalls)		•	3	[REDACTED]	R
L204	Parking Stall, Crown Attorney (1 stall)		•	3	[REDACTED]	R
<b>ELEMENT L3 – POLICE VEHICLES</b>						
L301	Prisoner Transport Van Stall (2 stalls)		•	4	[REDACTED]	R
L302	Prisoner Transport Bus Stall (1 stall)		•	4	[REDACTED]	R
L303	Police Cruiser Stall (4 stalls)		•	4	[REDACTED]	R

## APPENDIX C

### Special Events

Special Operational Events	Details	Likely Volume		Special Operational Events	
		Events per Contract Year	Cumulative Hours per Contract Year	Cost per Event (C\$/ occurrence)	Cost of Use (C\$/ hour)
Court overrun	Any occasion on a weekday where courtcases continue past specified Courtroom Sessions	12	15	[REDACTED]	[REDACTED]
Ceremonies and Staff Meetings	Any occasion on a weekday evening, Saturday, Sunday, or public holiday where a large jury courtroom is required for judicial, police, and DCC staff	2	8	[REDACTED]	[REDACTED]
Stakeholder Meetings	Any occasion on a weekday evening, Saturday, Sunday, or public holiday where a large jury courtroom is required to conduct meetings with crown, police, probation, and parole stakeholders	4	8	[REDACTED]	[REDACTED]

Cost per Event is assumed to be occurrence to which the Hourly Cost of Use is applied. For example, Ceremonies, Staff and Stakeholder meetings are assumed to require advance call-in to have Facilities Management staffing available.

**APPENDIX D**  
**Required Sessions**

Facility Program Reference Numbers	Required Sessions
A100, A200, A300, A400, A500, A600, A700 All "D" All "J"	2 sessions per day Session 1: 8:00 to 14:00 (inclusive) Session 2: After 14:00 to 21:00 (inclusive)
All "B" All "C" All "F" All "H" All "L"	1 session per day All 24:00 hours
A800 All "E" All "G" All "K"	1 session per day 8:00 am to 9:00 pm

## APPENDIX E

### Original Annual Prices for Market Tested Services in Base Date Prices

Service	Canadian \$
Cleaning services – building exterior	<b>[\$REDACTED]</b>
Cleaning services – building interior	Included in Exterior Cleaning
Grounds maintenance and landscaping services	<b>[\$REDACTED]</b>
Security services	<b>[\$REDACTED]</b>
Furniture and Office Equipment Services	Cost Plus per Schedule B, Part III – Post-Installation Services
Food Services	<b>[\$REDACTED]</b>
Parking Services	<b>[\$REDACTED]</b>
Material Services	Included in Security Services

Cleaning for Building Exterior is provided by the same subcontractor as Interior Cleaning, and is included in the Building Interior Pricing. These Services are grouped as considered by Project Agreement Paragraph 50.2 Grouping of Service Period Works.

Security Services includes Material Services and is provided by the same subcontractor. These Services are grouped as considered by Project Agreement Paragraph 50.2 Grouping of Service Period Works.

## APPENDIX F

### Prescribed Operational Function of Spaces

Functionality Type	Spaces	Prescribed Operational Function
<b>A</b>	<b>Judicial Hearing Rooms:</b> Courtrooms, Motions Rooms, Conference/Settlement Rooms, Entry Vestibules, Courtroom Exit Sound Locks, Video Remand Booths	<p>Room suitable for the hearing of cases, motions, and other matters brought before the court in the presence of a Judicial Officer.</p> <p>Critical features to support this function are:</p> <ul style="list-style-type: none"> <li>▪ Access from private circulation for the judiciary, court staff and equipment.</li> <li>▪ Access from public circulation via the Entry Vestibule for the crown and defense counsel, general public, advocates, witnesses etc.</li> <li>▪ Where persons-in custody are accommodated in the courtroom, access from prisoner circulation for police officers escorting persons in custody into the courtroom is required.</li> <li>▪ The ability to hear and see the court proceedings from the public gallery.</li> <li>▪ Voice and data connectivity is required for the procedural functioning of the court.</li> <li>▪ Entry Vestibules and Exit Sound Locks must minimize noise transmission between the public circulation corridor and the courtroom</li> <li>▪ Furniture and millwork (loose or fixed) as required for the functioning of the courtroom, motions room or conference /settlement room.</li> <li>▪ Where Video Remand Booths are provided, the booth is accessed from within the courtroom to allow a telephone conversation with someone who is in a remote location</li> </ul>
<b>B</b>	<b>Waiting Areas:</b> Courtroom, Motions Room and Conference Settlement Waiting Areas, Witness Waiting Rooms, Police Witness Waiting Rooms, Public Telephones	<ul style="list-style-type: none"> <li>▪ Waiting Areas are open areas in close proximity to the judicial hearing rooms where seating and public telephones are provided for court users.</li> <li>▪ Witness waiting rooms and Police witness waiting rooms are enclosed spaces in close proximity to the courtrooms where witnesses can wait.</li> </ul>
<b>C</b>	<b>Judicial Hearing Room Support Spaces (Public Side):</b> Interview Rooms Adjacent to Courtroom, Interview Rooms, Crown Resolution Rooms	Rooms adjacent or in close proximity to the judicial hearing rooms, where confidential consultations can take place. Access is required from public circulation.
<b>D</b>	<b>Judicial Hearing Room Support Spaces (Private Side):</b> Jury Rooms, Technical Equipment Storage Rooms, Audio Visual Service Rooms, Courtroom Storage Rooms, Ice Machine Alcove, Copier Rooms, Simultaneous Interpretation Room	<p>Spaces accessed from private circulation which serve to support the functions of the judicial hearing rooms:</p> <ul style="list-style-type: none"> <li>▪ Jury Room where jury members deliberate, or wait prior to entering the court or during a court recess. Includes washrooms and a kitchenette where hot and cold snacks and beverages can be stored and prepared.</li> <li>▪ Simultaneous Interpretation Room where an interpreter can sit and interpret to persons in the courtroom without disrupting court</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Service rooms (lockable) to house technical equipment, audiovisual systems equipment and cabling, courtroom furniture and equipment.</li> <li>▪ Alcove containing an ice machine and sink used to fill courtroom water jugs.</li> <li>▪ Copier room housing copier to permit quick copying of court documents by court staff. Machine noise cannot disrupt judicial hearing rooms.</li> </ul>
<b>E</b>	<b>Child-Friendly Suite:</b> Remote Video Testimony Room, Child Waiting and Play Room, Video Monitor Storage Closet, Child Witness Entry Vestibule	<p>A suite of spaces accessed off public circulation and connected to two courtrooms:</p> <ul style="list-style-type: none"> <li>▪ Remote video testimony room permits witnesses to provide remote evidence via a video link.</li> <li>▪ Child Waiting and Play Room used by children waiting to appear in court or meet with the judge and by those waiting to use the remote video testimony room</li> <li>▪ Storage closet housing the video equipment (lockable).</li> <li>▪ Entry Vestibule provides access to the child-friendly suite and minimizes noise from the public corridor into the child-waiting and play room</li> </ul>
<b>F</b>	<b>Jury Assembly Spaces:</b> Waiting Area, Registration Station, Coat Closet, Convenience Lockers, Public Telephones, Coffee Servery, Vending Machines, Bookshelves	<p>A suite of spaces which provides assembly point and general waiting area for potential jurors:</p> <ul style="list-style-type: none"> <li>▪ Waiting area provides seating for potential jurors</li> <li>▪ Allows administrative matters and queries to be addressed, and instructional videos to be viewed by potential jurors.</li> <li>▪ Registration desk with voice and data connectivity for court support staff to greet and confirm attendance for potential jurors and perform other administrative functions.</li> <li>▪ Support areas and spaces include coat closet, lockers, public telephones, vending machines, bookshelves and coffee servery for hot and cold drink preparation for use of potential jurors.</li> </ul>
<b>G</b>	<b>Prisoner Holding and Transport Areas:</b> Sallyport, Holding Cells, Group Holding Cells, Segregated and Barrier-Free Holding Cells, Segregated Cell Vestibule, Courtroom Holding Cell, Courtroom Holding Cell Sound Lock, Prisoner Staging Area,	<b>[REDACTED]</b>
<b>H</b>	<b>Prisoner Handling Support Spaces:</b> Security Control Room, Security Control Equipment Room, Security Identification Room, Search Rooms, Admitting Area with Lockers, Reception Desk, Gun Storage and Loading Station, Lawyer/Prisoner Consulting Cubicles, Waiting Area, Special Constables, In-Custody Video Room, Emergency Shower and Eyewash, Police Emergency	<b>[REDACTED]</b>

	Shower, Housekeeping Closet	
<b>I</b>	<b>Public Reception Spaces:</b> Counter Stations, Visitor Waiting areas, Reception Counters, Intake Courts, Interview Rooms, Public Waiting Areas, Form Filling Areas and Carrels, Public Computer Terminal Carrels, Video Viewing Area/Child Play Area, Reference Areas, Information Office, Convenience Copiers, VWAP Child Waiting/Play Area, VWAP Entry Vestibule	Spaces for the public to file documents, make enquires, wait for service or appointments, receive information, access reference material, fill out forms, make photocopies, etc. In addition: <ul style="list-style-type: none"> <li>▪ Counter stations and reception counters provide space for staff to securely deal with enquiries from the public and receive visitors to the courthouse.</li> <li>▪ Intake Courts are used by Justice of the Peace to meet with the public.</li> <li>▪ Interview Rooms provide space for staff to hold confidential interviews. Interview rooms are secure where noted.</li> <li>▪ Video Viewing Area/Child Play area is part of the FLIC and is used to view informational videos resources and provide an area for children to play</li> <li>▪ VWAP Child Waiting/Play Area is a space where children can wait while their parents meet with staff or before going into court as a witness.</li> <li>▪ VWAP Entry Vestibule is a secure vestibule off public circulation providing controlled access to the VWAP suite.</li> </ul>
<b>J</b>	<b>Workspaces:</b> Judicial and Masters Chambers, Offices, Workstations, Retiring Rooms.	All workspaces require access from corridors or other office areas. Workspaces must accommodate day-to-day office functions and require voice and data connectivity. Enclosed offices are lockable and provide space for confidential conversations and file storage. Barrier-free features and access are required where provided. In addition: <ul style="list-style-type: none"> <li>▪ Chambers and provide workspace, soft seating and ensuite washroom for a judge, or master to carry out responsibilities that include the review of court files and preparing judgments.</li> <li>▪ Office for a justice of the peace provides workspace and soft seating</li> <li>▪ Retiring Rooms include workspace, soft seating and ensuite washrooms and are available for the use of judicial officers</li> </ul>
<b>K</b>	<b>Office and Technology Support Space:</b> Copier Rooms, File Storage Rooms, File Storage Areas, File Storage Work Areas, File Cabinets, File Sorting Areas, Bookshelves, Supplies Cabinets, Forms Storage, Miscellaneous Storage, Shared Printer Stations, Fax Stations, Coat Closets, Server Rooms, Copier rooms, Copier/Printer/Fax/Shredder Rooms, Copier/Shedder Rooms, Copier/Supplies/Printer Rooms, Copier/Supplies Rooms, Tape Preparation and Duplication Work Area, Secure Storage Rooms, Video Copying Area, Holding area, Video Storage, Tape Eraser/Blank Tape Storage	All Office and Technology Support Space requires frequent staff access throughout the day. Security and controlled access must be available where provided. Specific functions are: <ul style="list-style-type: none"> <li>▪ File Storage rooms and areas are required to house file cabinets, shelving, high density mobile files, mechanical file units and other file systems to store administrative and confidential records.</li> <li>▪ File work areas and sorting areas are used to prepare, update and check files.</li> <li>▪ Bookshelves are required hold books and binders</li> <li>▪ Copier rooms are used for copiers and other equipment, paper storage and must minimize noise and nuisance from machines.</li> <li>▪ Tape Preparation and duplication work area is used to organize court tapes and transcript requests including the duplication of audiotapes and logbooks.</li> <li>▪ Coat closets are required for use of staff and visitors. Closets for courtroom gowns require easy access by staff throughout the day.</li> <li>▪ Server rooms contain computer server equipment</li> <li>▪ Secure Storage rooms are required to house exhibits, tapes, files, tape log books, central recording equipment, confidential items, cash and valuables, safes, etc.</li> </ul>

	Room, Communications Service Entry Room, Telephone/Network Equipment Room	<ul style="list-style-type: none"> <li>▪ Supplies rooms and cabinets are required to store forms, stationery and general office materials.</li> <li>▪ Video copying area is required to contain video copying equipment and functions.</li> <li>▪ Telecommunications service rooms contain equipment and services required to support the building telecommunications systems.</li> </ul>
<b>L</b>	<b>Program Storage:</b> Inactive Records, Secure Storage, Enforcement Storage, Secure Exhibit Storage, Bulk Stationary Storage, Furniture Storage	Storage areas are required to have controlled access. Staff require access to the storage areas on an as-needed basis.
<b>M</b>	<b>Meeting, Lounge and Library Space:</b> Judicial Library, Meeting Room/Lounge, Kitchenette, Meeting/Lunch Room, Meeting Rooms, Meeting/Training Rooms, Meeting Room/Library, Library Bookstacks, Study Area, Study Carrels, Photocopier Area, Counsel Services Lounge and Robing Rooms	Meeting, lounge and library space provides rooms for confidential meetings, lunch meetings, training, storage of reference material, space for research, study and relaxation. Kitchenettes allow the storage and preparation of hot and cold food. All meeting, lounge and library space requires voice and data connectivity. In addition: <ul style="list-style-type: none"> <li>▪ The Law Library requires access to the public during business hours and after-hours access for members of the Law Association.</li> <li>▪ The Counsel Services Lounge is available for members of the local Bar Association to use during adjournments and before and after court to make calls, confer with other lawyers.</li> <li>▪ Robing rooms provide space for members of the local Bar Association to place coats and other belongings in day lockers and robe for court as required.</li> </ul>
<b>N</b>	<b>Public lobby, Entrance Vestibules, Food Outlet, all public, private and prisoner circulation space:</b> Lobby, Information Kiosk, Public telephones, Security Screening, Queuing Area, Building Security control Centre, Food Preparation Area, Public/Staff Seating Area, Judicial Entrance Vestibule	<ul style="list-style-type: none"> <li>▪ The entry provides an area for all visitors and staff to enter the courthouse, line up, and pass through the security checkpoints into the lobby. The lobby includes general orientation space for the public, an information kiosk to address general queries, public telephones, and seating.</li> <li>▪ The Building Security Control room provides space and equipment for the police or security staff to monitor the security systems for the courthouse.</li> <li>▪ The Food Outlet provides an area for courthouse users to purchase food and beverages, and to sit and eat or relax. Includes an area for food to be prepared and sold.</li> <li>▪ The Judicial Entrance Vestibule provides a secure entrance into the courthouse for judicial officers.</li> </ul>
<b>O</b>	<b>Staff Support Spaces:</b> Staff Lunchrooms, CSO Rest/Lunch Room, Locker rooms, First Aid/Rest room, Lunch/Parade/Training Room,	Staff Support Spaces include lunchrooms, rest rooms and kitchenettes for staff to eat and relax. Locker rooms are used by staff to secure their belongings. The First Aid/Rest Room provides space for staff or other court users to be taken when they are ill or suffer an accident.
<b>P</b>	<b>Washrooms</b>	Washrooms are provided for the use of the public and staff, including barrier free washrooms and restricted access washrooms.
<b>Q</b>	<b>Building Operations:</b> Central Mail Sorting Room, Central Mail Holding Room, Shipping/Receiving Area, Shipping/Receiving Office, Garbage Disposal Area, Loading Dock	Building Operations Space provides rooms and areas for: <ul style="list-style-type: none"> <li>▪ The receipt, scanning, and sorting of all incoming mail and courier packages.</li> <li>▪ The collection and posting of outgoing mail and courier packages.</li> <li>▪ The receipt, sorting and disposal of recycled material and waste from the entire Durham Consolidated Courthouse</li> </ul>



		<ul style="list-style-type: none"> <li>▪ A shipping/receiving office to manage the shipping area.</li> <li>▪ A shipping/receiving area for staging all supplies, materials and equipment being delivered and picked up</li> <li>▪ A loading dock for vehicles to deliver or pick up materials and equipment</li> </ul>
<b>R</b>	<b>Parking:</b> Parking Stalls, Barrier-free Parking Stalls, Prisoner Transport Van Stalls, Prisoner Transport Bus Stall, Police Cruiser stalls	Designated secure parking for authorized users, including barrier-free parking stalls where required.

## SCHEDULE G

### CALCULATION OF TERMINATION PAYMENTS

#### 1. DEFINITIONS

##### 1.1 Definitions.

Capitalized terms used herein and not otherwise defined have the meanings attributed to them in the Agreement. In this Schedule (and where relevant in any other part of the Agreement) unless the context otherwise requires, the following words and expressions shall have the following meanings:

- (a) **"Adjusted Estimated Fair Value of the Agreement"** means the Estimated Fair Value of the Agreement adjusted as follows:
- (i) where in respect of any Contract Month or part of a Contract Month 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 of the Agreement (whether or not such amounts have been set-off by HMQ pursuant to Section 3.3(f) of this Schedule);
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value of the Agreement;
    - (A) the Post Termination Service Amounts actually paid by HMQ to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that HMQ 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 of the Agreement:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value of the Agreement 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 of the Agreement; and

(D) HMQ has received such amounts in accordance with the Agreement.

(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 Contract Month or part of a Contract Month 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 HMQ pursuant to Section 3.3(f) of this Schedule);

(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 HMQ to Project Co prior to the Compensation Date;

(B) the Tender Costs; and

(C) amounts that HMQ 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), 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) HMQ has received such amounts in accordance with the Agreement.

(c) **"Compensation Date"** means either:

(i) if Section 3.3 of this Schedule applies, the earlier of:

(A) the date that the New Agreement is entered into; and

(B) the date on which HMQ pays the Adjusted Highest Qualifying Tender Price to Project Co; or

(ii) if Section 3.4 of this Schedule applies, the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined.

(d) **"Discount Rate"** means an amount equal to  $(A + B) / C$ , where:

A = the product of the outstanding principal amount of debt funded under the Financing 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 Project Co's aggregate subscribed share capital as at Financial Close and the Financial Model Equity IRR.

C = the sum of the outstanding principal amount of debt funded under the Financing Agreements on the date of calculation and Project Co's aggregate subscribed share capital as at Financial Close.

(e) **"Employee Termination Payments"** means termination payments which are required under Applicable Law to be made to employees of Project Co (or to employees of the Project Co Party) reasonably and properly incurred by Project Co or the relevant Project Co Party arising as a direct result of terminating the 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.

(f) **"Estimated Fair Value of the Agreement"** means the amount determined in accordance with Section 3.4 of this Schedule.

(g) **"Financial Model Equity IRR"** means [REDACTED].

(h) **"Force Majeure Termination Sum"** has the meaning given in Section 4.1(b) of this Schedule.

(i) **"HMQ Default Termination Sum"** has the meaning given in Section 2.1(b) of this Schedule.

(j) **"Invoice Date"** means the date that is the later of:

(i) the date on which HMQ receives an invoice from Project Co for the relevant termination sum; and

- (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 7.1(a) of this Schedule.
- (k) "**Liquid Market**" means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for alternate financing and procurement agreements or similar agreements in Canada for the provision of services to courthouse facilities under an alternative financing and procurement model (in each case the same as or similar to the Agreement) such that the retendering process in Section 3.3 of this Schedule 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 of the Agreement under Section 3.4 of this Schedule.
- (l) "**Market Value Availability Deduction Amount**" means for any Contract Month or part of a Contract Month, an amount equal to the Deductions for Unavailability Events and Failure Events that were made from the Monthly Service Payment under Schedule F (Payment Mechanism) of the Agreement in the Contract Month immediately preceding the Termination Date, less an amount equal to Deductions for Unavailability Events and Failure Events that were made which have subsequently been rectified whether as a result of HMQ incurring Rectification Costs or otherwise.
- (m) "**Maximum Service Payment**" means the Monthly Service Payments payable at any time before any deductions under Schedule F (Payment Mechanism) but allowing for indexation under Schedule F (Payment Mechanism).
- (n) "**New Agreement**" means an agreement on substantially the same terms and conditions as the Agreement as at the Termination Date, but with the following amendments:
  - (i) if the Agreement is terminated prior to the Planned Completion Date, then the Completion Longstop Date shall be extended by a period to allow a New Project Co to achieve Completion prior to such extended Completion Longstop Date;
  - (ii) any accrued Service 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.
- (o) "**New Project Co**" means the person who has entered or who will enter into the New Agreement with HMQ.
- (p) "**Post Termination Service Amount**" means, for the purposes of Section 3.3 of this Schedule, for the whole or any part of a Contract Month 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 the Agreement had the Agreement not been terminated, less an amount equal to the aggregate of (without double counting):

- (i) the reasonable and proper cost to HMQ of procuring the Service Period Works;
  - (ii) the Market Value Availability Deduction Amount for that Contract Month; and
  - (iii) the Rectification Costs incurred by HMQ in that Contract Month.
- (q) **"Prohibited Acts Termination Sum"** has the meaning given to it in Section 5.1(b) of this Schedule.
- (r) **"Qualification Criteria"** means the criteria that HMQ 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 Service Period Works 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 HMQ, acting reasonably, which shall include, without limitation, (if the same reflects then current market practice) a requirement for a letter of credit to support the submission of a Qualifying Tender or any other such similar commitment or security from tenderers as then reflects current market practice.
- (s) **"Qualifying Tender"** means a tender that meets all of the Qualification Criteria.
- (t) **"Qualifying Tenderer"** means a tenderer who submits a Qualifying Tender.
- (u) **"Rectification Costs"** means, for the purposes of any Termination Date that occurs after the Completion Date, an amount equal to the reasonable and proper costs incurred by HMQ in a particular Contract Month or part of a Contract Month in ensuring that the Service Period Works are available.
- (v) **"Security Documents"** has the meaning ascribed to it in the Lenders' Direct Agreement.
- (w) **"Senior Debt Termination Amount"** means, at any time, the then outstanding principal amount of debt funded under the terms of the Senior Financing Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, and all other amounts then due and payable to the Senior Lenders under the Senior Financing Agreements, including any "make whole" 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 Senior Lenders pursuant to the Senior Financing Agreements.

- (x) "**Senior Lenders' Agent**" means the person appointed as agent for the Senior Lenders under the Senior Financing Agreements and authorized to act on behalf of the Lenders.
- (y) "**Subcontractor Losses**" means, subject to Project Co's obligations under the Agreement to limit any compensation to Subcontractors:
  - (a) the amount reasonably and properly payable by Project Co to the Construction Subcontractor under the terms of the Construction Subcontract as a direct result of the termination of the Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or Subcontractors fail to take all reasonable steps to mitigate such amount; and
  - (b) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Operating Subcontract as a direct result of the termination of the Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or 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:
  - (c) 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 reasonable commercial breakage fee set out in any of the Ancillary Documents);
  - (d) 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
  - (e) 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.
- (z) "**Suitable Substitute**" has the meaning ascribed to it in the Lenders' Direct Agreement.
- (aa) "**Tender Costs**" means the reasonable and proper costs of HMQ incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value of the Agreement.
- (bb) "**Tender Process**" means the process by which HMQ 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.

(cc) **"Tender Process Monitor"** has the meaning given in Section 3.3(g) of this Schedule.

## **2. COMPENSATION ON TERMINATION FOR HMQ DEFAULT OR VOLUNTARY TERMINATION**

### **2.1 Compensation**

(a) If Project Co terminates the Agreement pursuant to Section 32 of the Agreement (Default by HMQ) or HMQ terminates the Agreement pursuant to Article 33 of the Agreement (Voluntary Termination by HMQ), HMQ shall pay to Project Co the HMQ Default Termination Sum.

(b) The "HMQ Default Termination Sum" shall be an amount equal to the aggregate of:

- (i) the Senior Debt Termination Amount (referred to as "A" for purposes of this Section 2);
- (ii) Employee Termination Payments and Subcontractor Losses (referred to as "B" for purposes of this Section 2); and
- (iii) an amount which, if paid on the Termination Date and taken together with all dividends (or other Distributions) paid by Project Co on its share capital on or before the Termination Date and other Distributions made 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) which, after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Financial Model Equity IRR on the amount of cash paid to Project Co for subscribed share capital to the extent that such share capital proceeds have been applied by Project Co for the purposes of the Project (referred to as "C" for purposes of this Section 2);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (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 HMQ is required to procure insurances and to make proceeds available to Project Co under the 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 the 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 the Agreement) to



HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims (referred to as "D" for purposes of this Section 2); and

- (v) 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 HMQ pursuant to the Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the 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

(referred to as "E" for the purposes of this Section 2); and

- (vi) amounts which HMQ is entitled to set off or deduct, (referred to as "F" for purposes of this Section 2)

provided that the HMQ Default Termination Sum shall never be less than the Senior Debt Termination Amount.

- (c) For ease of reference, the following is the formula for the HMQ Default Termination Sum:

HMQ Default Termination Sum = the greater of: (i)  $(A+B+C) - (D+E+F)$  (to the extent D, E and F are positive amounts) and (ii) the Senior Debt Termination Amount.

- (d) To the extent that such assets and rights referred to in Sections 2(b)(iv) or 2(b)(v) are not realized and applied pursuant thereto, Project Co shall, on payment of the HMQ Default Termination Sum, assign such assets and rights to HMQ.
- (e) HMQ shall pay the HMQ Default Termination Sum in accordance with Section 7 of this Schedule.

### **3. COMPENSATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) Save and except where Sections 5 or 6 apply, if HMQ terminates the Agreement pursuant to Section 31 (Default by Project Co) of the Agreement (other than as a result of a Project Co Default arising as a result of a breach by Project Co of its obligations under Article 30 (Refinancing) or Article 34 (Prohibited Acts) of the Agreement) HMQ 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 or the Adjusted Estimated Fair Value of the Agreement according to the no retendering procedure set out in Section 3.4 of this Schedule, as applicable.

### **3.2 Retendering Election**

- (a) HMQ shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule and the provisions of that Section shall apply if:
  - (i) HMQ notifies Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,

but otherwise HMQ shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule and the provisions of that Section shall apply. 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, Project Co shall continue to provide the Service Period Works and HMQ 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) HMQ 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) HMQ 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.
- (d) Project Co authorizes the release of any information by HMQ under the Tender Process which would otherwise be prevented under Section 48 of the Agreement (Information, Confidentiality, and Freedom of Information and Protection of Privacy) that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to provide the Service Period Works, and for all or any part of a Contract Month, falling within the period from the Termination Date to the Compensation Date, HMQ shall pay to Project Co:
  - (i) the Post Termination Service Amount for each completed Contract Month, on or before the date falling 20 Business Days after the end of that Contract Month; and

- (ii) the Post Termination Service Amount for the period from the end of the last completed Contract Month 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 Senior Lenders on HMQ's compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with HMQ in a form acceptable to HMQ 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 HMQ as to compliance with the Tender Process. HMQ 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 Senior Lenders but shall be entitled to advise Project Co and the Senior Lenders on whether it considers that HMQ 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, HMQ 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 the Dispute Resolution Procedure, HMQ shall, irrespective of such dispute, be entitled to enter into a New Agreement.
- (j) HMQ shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 7 of this Schedule.
- (k) HMQ may elect, by notice to Project Co at any time prior to HMQ ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4 of this Schedule. In addition, HMQ 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 7.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to HMQ 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 HMQ is in agreement with such notice, the provisions of Section 3.4 of this Schedule shall apply. If HMQ 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 HMQ within

such 10 Business Day period, the matter shall be referred for determination in accordance with the Dispute Resolution Procedure.

### **3.4 No Retendering Procedure**

- (a) Subject to Section (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 HMQ 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 HMQ 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 of the Agreement, 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 the Agreement, will be made and if made will use an assumed inflation rate of 2% per annum;
  - (ii) the total of all payments of the Monthly Service Payments forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that period, shall be calculated and discounted at the Discount Rate;
  - (iii) the total of all costs reasonably forecasted to be incurred by HMQ as a result of termination shall be calculated and discounted at the Discount Rate, such costs to include (without double counting):
    - (A) 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)(iii)) whether or not forecast in the relevant financial model and represented in the Financial Model as of the Date of Agreement;
    - (B) the costs of obtaining or providing the Service Period Works reasonably forecast to be incurred by HMQ from the Termination Date to the Expiry Date to the standard required; and
    - (C) any rectification costs (including Rectification Costs) required to deliver the Project Operations to the standard required, including, if applicable, to complete the Project Works, any costs reasonably forecast to be incurred by HMQ 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 and other 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 Section 3.4(c)(iii)(C)) the aggregate of:

- (1) any insurance proceeds received or which will be received by HMQ in connection with the Project; and
- (2) amounts payable by HMQ in respect of Capital Expenditures under the Agreement which have not been paid,

in each case such costs to be forecast at a level that will deliver the Service Period Works and other Project Operations to the standards required by the Agreement and to achieve the full Monthly Service Payments (without Deductions);

- (iv) the Estimated Fair Value of the Agreement shall be equal to the total of the discounted values of the payments calculated pursuant to Section 3.4(c)(ii) less the total of the discounted values of the costs calculated pursuant to Section 3.4(c)(iii); and
  - (v) the calculation will take into consideration the obligations of HMQ and Project Co with respect to allowances and payments under the Agreement.
- (d) If the parties cannot agree on the Estimated Fair Value of the Agreement, then the Estimated Fair Value of the Agreement shall be determined in accordance with the Dispute Resolution Procedure.
  - (e) HMQ shall pay the Adjusted Estimated Fair Value of the Agreement in accordance with Section 7 of this Schedule.

#### **4. CONSEQUENCES OF TERMINATION FOR FORCE MAJEURE**

##### **4.1 Consequences**

- (a) If Project Co or HMQ terminates the Agreement pursuant to Section 38 (Force Majeure) of the Agreement, HMQ shall pay to Project Co the Force Majeure Termination Sum.
- (b) The "Force Majeure Termination Sum" shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Termination Amount (referred to as "A" for purposes of this Section 4);
  - (ii) Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit) (referred to as "B" for purposes of this Section 4); and
  - (iii) an amount equal to all cash amounts paid to Project Co by way of subscription for shares in the capital of Project Co less dividends and other Distributions paid to the Shareholders, provided that where such amount is negative, it shall be deemed instead to be zero (referred to as "C" for purposes of this Section 4);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (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 HMQ is required to procure insurances and to make proceeds available to Project Co under the 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 the 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 the Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims (referred to as "D" for purposes of this Section 4);
- (v) 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 HMQ pursuant to the Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the 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
- (referred to as "E" for purposes of this Section 4); and
- (vi) amounts which HMQ is entitled to set off or deduct, (referred to as "F" for purposes of this Section 4)

provided that the Force Majeure Termination Sum shall never be less than the Senior Debt Termination Amount.

- (c) For ease of reference, the following is the formula for the Force Majeure Termination Sum:

Force Majeure Termination Sum = the greater of: (i)  $(A+B+C) - (D+E+F)$  (to the extent D, E and F are positive amounts) and (ii) the Senior Debt Termination Amount.

- (d) To the extent that such assets and rights referred to in Sections 4.1(b)(iv) or 4.1(b)(v) are not realized and applied pursuant thereto, Project Co shall, on payment of the Force Majeure Termination Sum, assign such assets and rights to HMQ.
- (e) HMQ shall pay the Force Majeure Termination Sum in accordance with Section 7 of this Schedule.

## **5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS**

### **5.1 Consequences**

- (a) If HMQ terminates the Agreement pursuant to Section 34 of the Agreement (Prohibited Acts) HMQ pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "Prohibited Acts Termination Sum" shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Termination Amount; and
  - (ii) the following amounts calculated in respect of the Construction Subcontractor, if the Construction Subcontractor is not responsible for a Prohibited Act, and the Service Provider, if the Service Provider is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
    - (A) the Employee Termination Payments; and
    - (B) as applicable, the Construction Subcontractor's and Service Provider's out-of-pocket costs incurred as a direct result of termination of the Agreement (excluding any breakage fees and overhead and profit of the Construction Subcontractor and Service Provider, as applicable);

(referred to as "A" for purposes of this Section 5);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (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 HMQ is required to procure insurances and to make proceeds available to Project Co under the 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 the 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 the Agreement) to

HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims (referred to as "B" for purposes of this Section 5); and

- (iv) 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 HMQ pursuant to the Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the 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.

(referred to as "C" for purposes of this Section 5);

- (c) For ease of reference, the following is the formula for the Prohibited Acts Termination Sum:

Prohibited Acts Termination Sum = A - (B+C).

- (d) To the extent that such assets and rights referred to in Sections 5.1(b)(iii) or 5.1(b)(iv) are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum assign such assets and rights to HMQ.
- (e) HMQ shall pay the Prohibited Acts Termination Sum in accordance with Section 7 of this Schedule.

## **6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING**

- (a) If HMQ terminates the Agreement pursuant to a Project Co Default for failing to comply with Section 2.12 of the Agreement or Article 30 (Refinancing) of the Agreement or the Senior Lenders assign, transfer, or otherwise dispose of any right, title or interest it/they may have in, or obligations it/they may have pursuant to the Security Documents or any other Senior Financing Agreements in breach of the Lenders' Direct Agreement, HMQ shall pay to Project Co a termination sum equivalent to, and calculated in accordance with, the Prohibited Acts Termination Sum less amounts which HMQ is entitled to set off or deduct.
- (b) HMQ shall pay such termination sum in accordance with Section 7 of this Schedule.



## **7. GENERAL**

### **7.1 Payment and Interest following HMQ Default, Force Majeure, Prohibited Acts or Breach of Refinancing**

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5 or 6 of this Schedule, as soon as practicable after, and in any event within 30 days after, the Termination Date, Project Co shall give to HMQ an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) HMQ shall pay to Project Co:
  - (i) the relevant termination sum within 60 days after the Invoice Date; and
  - (ii) interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:
    - (A) at the Interest Rate 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, at the Default Interest Rate.
- (c) In respect of the termination payments to be made pursuant to any of Sections 3, 5 or 6 of this Schedule G, if the applicable termination sum is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall within 60 days after the Invoice Date pay to HMQ the amount by which such termination sum is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

### **7.2 Payment and Interest following Project Co Default - Retendering Procedure**

- (a) Following the retendering procedure set out in Section 3.3 of this Schedule, HMQ 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 HMQ 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, referred a dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with the Dispute Resolution Procedure, the date on which the dispute is finally determined, provided that HMQ shall pay the undisputed amount on the date referred to in Section 7.2(a)(i),

together with interest thereon at the Interest Rate from the date on which HMQ entered into the New Agreement until the date that such payment is due and payable, and thereafter with interest at the Default Interest Rate.

- (b) If the Adjusted Highest Qualifying Tender Price is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall on the date of the New Agreement pay HMQ the amount by which such termination sum is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

### **7.3 Payment and Interest following Project Co Default - No Retendering Procedure**

- (a) If HMQ follows the no retendering procedure set out in Section 3.4 of this Schedule, HMQ shall pay to Project Co the Adjusted Estimated Fair Value of the Agreement no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value of the Agreement has been agreed or determined in accordance with Section 3.4 of this Schedule together with interest on such amount calculated in accordance with Section 7.1(b)(ii).
- (b) If the Adjusted Estimated Fair Value of the Agreement is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall on the Compensation Date pay HMQ the amount by which the Adjusted Estimated Fair Value of the Agreement is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

### **7.4 Costs**

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 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.

### **7.5 Undisputed Amounts**

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 7 and the disputed amount shall be dealt with in accordance with the Dispute Resolution Procedure.

### **7.6 Outstanding Senior Debt Termination Amount**

- (a) HMQ shall be entitled to rely on a certificate of the Senior Lenders' Agent as conclusive as to the amount of the Senior Debt Termination Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Senior Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Termination Amount (and where appropriate any accrued interest or breakage costs as certified in accordance with Section 7.6(a) above), such receipt or other

acknowledgement shall discharge HMQ's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**7.7 Project Co Default re Failure to Maintain Insurance**

- (a) If during the occurrence and continuance of an HMQ Default HMQ becomes aware that there has occurred a Project Co Default described in paragraph (j) of the definition of "Project Co Default" in the Agreement, the Termination Sum payable to Project Co shall be calculated in accordance with Section 3 of this Schedule.

**SCHEDULE H**  
**BACKGROUND CHECK REQUIREMENTS**

1. In order to prevent persons who pose a security risk from gaining access to sensitive information or otherwise compromising the judicial process or the security integrity of the Project Facilities, the following persons (“**Designated Project Co Employees**”) shall submit to a criminal record name check through the Canadian Police Information Center (“**CPIC**”):
  - (a) every person employed or engaged by Project Co, each contractor or subcontractor to Project Co, who is:
    - (i) to carry out any of the responsibilities of Project Co under this Agreement during the Service Period; or
    - (ii) identified by name in any proposal submitted by Project Co or who is hired in replacement of any person so named;
  - (b) every person employed, engaged or hired by Project Co in connection with the construction of the Project Facilities and 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 Project Facilities, including all security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras or alarms; or
  - (c) every other person otherwise designated as a Designated Project Co Employee by MAG or HMQ from time to time.
2. At its discretion, MAG or HMQ may prescribe additional or alternative security or other background checks that are to be conducted with respect to any person employed by Project Co, or any contractor or subcontractor to Project Co with respect to the performance of any of Project Co’s responsibilities under the Agreement. Without limiting the generality of this provision, MAG or HMQ may require a check under the Security Screening Program operated by the Canadian Security Intelligence Service (“**CSIS**”) for any person who, in the performance of his or her duties, will have or is likely to have access to secure areas of the Project Facilities or to classified government or court-related assets or information. The cost of CSIS and any other additional or alternative security checks (other than CPIC checks) will be borne by HMQ.
3. Notwithstanding paragraphs 1 and 2 above, to the extent a person contemplated in paragraph 1 has not undergone the background checks contemplated in paragraph 1, or any other checks contemplated in paragraph 2, in an emergency situation

- only (as confirmed by HMQ), such person shall nonetheless be permitted access to the Site provided that such person, while on the Site, is accompanied at all times by a representative of Project Co, the Construction Subcontractor or the Service Provider who has submitted a CPIC check in accordance with paragraph 1 above and has submitted to the additional or alternative background checks set forth in paragraph 2 above, if such checks were required by HMQ.
4. HMQ may require the renewal of a background check provided for under paragraphs 1 or 2 above, with respect to any individual person, class of persons or all persons within the scope of those sections, at such intervals as the HMQ may reasonably direct. The cost of renewed background checks provided for under paragraph 1 of this Schedule shall be borne by Project Co, provided that HMQ has reasonable grounds for believing that a person or class of persons would pose a security risk, otherwise HMQ shall be responsible for the cost of renewed background checks provided for under paragraph 1. The cost of renewed security checks provided pursuant to paragraph 2 shall be borne by HMQ.
  5. Except as required under paragraphs 1, 2 or 4 above no background check shall be required with respect to any person employed in the construction or commissioning of the Project Facilities, unless such construction and/or commissioning of the Project Facilities occurs after Completion.
  6. Project Co shall obtain written consent, on a prescribed Government of Ontario or Ontario Provincial Police form, authorizing the conduct of a background check under paragraphs 1, 2 or 4 from each person liable to a check under each of those paragraphs respectively.
  7. Every person shall be bonded who is employed by Project Co, or any contractor or subcontractor to Project Co with respect to:
    - (a) the movement of staff or equipment into, out of, or within the Project Facilities;
    - (b) the installation, testing or repair of computer, phone or other communications or information technology wiring, cables or equipment; or
    - (c) the installation, testing or repair of security features of the Project Facilities, including all security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras, or alarms.
  8. Subject to Applicable Law, MAG may direct that any Designated Project Co Employee shall not be:
    - (a) employed by Project Co, or any contractor or subcontractor to Project Co with respect to the performance of any of Project Co's responsibilities under this Agreement; or

(b) otherwise have access to the Project Facilities,

where that person,

(c) refuses to submit to a background check under paragraphs 1, 2 or 4, or fails to provide the required consent to permit such a check to be made;

(d) has been refused a Level I (“**Confidential**”) security clearance from CSIS, if MAG has directed that such a security clearance is required;

(e) has been charged with or convicted at any time within the previous 6 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 MAG or HMQ from time to time,

and that conviction remains in effect at that time and is one for which a pardon has not been granted (a “**Relevant Conviction**”); or

(f) is otherwise considered to constitute a security risk in the reasonable opinion of MAG, including with respect to the proper and impartial performance of the services to be provided by Project Co under the Agreement, the safety and welfare of the public, the reputation of and public confidence in the Ontario Court system, the security of revenue, equipment or any other property of the Government of Ontario, and the confidentiality and integrity of court or government records or information.

For greater certainty, subject to paragraph 7, MAG’s discretion under subparagraphs 8(c), 8(d), 8(e) and 8(f) shall be interpreted to be absolute and unrestricted except as provided by Applicable Law.

9. Where a person has been rejected on the basis of his or her criminal record under paragraph 8, that person may request,

(a) 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

(b) that the alleged record be verified by way of a fingerprint search through CPIC,

and MAG shall withdraw its objection with respect to any such person who is exonerated or vindicated as a result of that inquiry or verification.

10. Where a person liable to a check under paragraphs 1, 2 or 4 is a partnership or a corporation, a check may be required of each of the partners, officers, or directors of that person.
11. For the purposes of this Protocol, “person” includes any individual, corporation, partnership, consortium, or joint venture or any association or combination of any two or more of the foregoing.

**SCHEDULE I**

**INSURANCE REQUIREMENTS**

**1. INSURANCE REQUIRED FOR FULL TERM OF THE ENTIRE AGREEMENT**

(1) Throughout the term of the entire Agreement, Project Co shall obtain and maintain at its own expense, the following policies of insurance insofar as each of the foregoing is relevant to the Project Works, Service Period Works and any other works and services required to be performed by Project Co under the Agreement:

- (a) Workplace Safety and Insurance Board coverage on all employees of Project Co and such other persons for whom Project Co is directly or indirectly responsible for their workers' compensation or analogous coverage;
- (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than:
  - (i) subject to paragraphs (ii) and (iii) \$[REDACTED]\*\* per occurrence;
  - (ii) where an aspect of performance by Project Co will involve the use of one or more automobiles or any combination of automobiles and towed vehicles having in any case a combined aggregate weight of 5 tonnes or more before loading, then with respect thereto coverage of \$[REDACTED]\*\* per occurrence; and
  - (iii) where any aspect of performance by Project Co will involve the transportation of an explosive substance, the use of excavation, snow removal or road construction equipment, or where such performance will involve the use of one or more automobiles or any combination of automobiles and towed vehicles having in any case a combined aggregate weight of 10 tonnes or more before loading, then with respect thereto coverage of \$[REDACTED]\*\* per occurrence;

for Third Party Liability, or in respect of the use or operation of vehicles owned, operated or leased by Project Co; and

Note: \*\* Umbrella or Excess Liability may be required in order to achieve these limits

- (c) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$[REDACTED] per occurrence, in respect of vehicles not owned by Project Co, that are used or operated on its behalf for the provision of services under the Agreement.



- (2) Throughout the term of the Agreement, Project Co shall maintain in place with respect to the Project Facilities and all Project Assets valid and enforceable insurance covering all normal insurable risks relating to the Project Assets (including fire, theft, burglary, tempest, tornado, cyclone, lightning, earthquake, flood, sewer back-up, blanket by-law extensions, debris removal and other risks or hazards as HMQ may require) and all other Project Assets and property entrusted to Project Co's care, custody and control under or by virtue of the Agreement. All policies of insurance within the scope of this subsection shall be for the full replacement value of such Project Assets and such property (if insurance of this type is commercially available in Ontario) or for its full insurable value (if replacement value insurance is not commercially available for the Project Assets and such property). Where Project Co neglects to keep the Project Assets and property entrusted to Project Co's care, custody and control under or by virtue of the Agreement or any of part of it insured as aforesaid or to deliver policies, receipts and such other evidence of that insurance as required by this Schedule I, then HMQ may (but shall not be obliged to) insure the Project Assets and such property or any of part of it, and any amount paid by the HMQ in connection therewith may be charged by it to the Annual Service Payment or any other amount otherwise payable by HMQ to Project Co.

## **2. INSURANCE REQUIRED FOR PROJECT WORKS**

- (1) Project Co shall obtain and maintain at its own expense, the following policies of insurance while carrying out the Project Works unless otherwise specified in this Section 2:
  - (a) Builders' Risk / Course of Construction Insurance covering the Project Facilities while under construction up until the date on which the building is certified as being ready for occupancy and meeting the following requirements:
    - (i) such insurance has a limit of not less than the full replacement cost of constructing the Project Facilities (including the cost of materials furnished by HMQ and MAG, that will be incorporated into the Project), less the cost of land, in an amount representing not less than **[REDACTED]**% of the total labour and material costs associated with constructing the Project Facilities and not less than **[REDACTED]**% of the total administrative soft costs in respect thereof, and which includes, without limitation, permits and municipal fees, direct construction costs (including any contingency costs), insurance and bonding costs, consultant fees, general and administrative fees, costs for furniture, fixtures and equipment, systems and software costs, cost for operating supplies and equipment, commissioning costs, management fees, construction financing costs and other project monitoring costs;
    - (ii) coverage shall include hot testing and commissioning and include boiler and machinery insurance for the boiler equipment and HVAC equipment; and
    - (iii) coverage shall include first party pollution clean up coverage for a limit of not less than **[\$REDACTED]**.

- (b) Wrap-up Liability Insurance covering third party bodily injury and property damage protecting all parties participating in the completion of Project with a \$[REDACTED] per occurrence limit, coverage to be provided for Completed Operations for a period of not less than twenty-four (24) months from the date that the building is certified as being ready for occupancy, it being understood that with respect to Completed Operations coverage the occurrence limit is subject to an aggregate of \$[REDACTED];
- (c) Project Specific Contractor's Professional Protective Indemnity & Liability Insurance having an inclusive limit of not less than \$[REDACTED] per claim and in the aggregate; coverage shall include a minimum four year extended reporting period (after the date that the building is certified as being ready for occupancy). In addition, Project Co shall cause its prime design subcontractor to obtain and maintain Standard Practice Policy insurance with an aggregate limit of no less than \$[REDACTED];
- (d) (where the proposed manner of executing the Project contemplates the use of an aircraft) Aircraft Liability Insurance with respect to any owned or non-owned aircraft as may be used directly or indirectly in connection with the construction of the Project Facilities, having an inclusive limit of not less than \$[REDACTED] per occurrence for Third Party Liability;
- (e) during construction and up until the date the building is certified as being ready for occupancy, to the extent that applicable coverage is not otherwise afforded under any of the other insurance required in this Schedule I, Equipment Floater All Risks Insurance, which coverage shall apply to all products, labour, equipment (including contractors' equipment) and all other supplies of every nature, the Project Assets, assets of HMQ or Project Co or for which HMQ or Project Co may have assumed responsibility (whether on Site or in transit); and
- (f) (First and Third Party) Pollution Liability Insurance or Environmental Impairment Liability Insurance, as may be applicable, covering the execution of the Project Works, including excavation and the installation of all utilities and other services and the supply of all tangibles, providing coverage in an amount of not less than \$[REDACTED] per claim or per occurrence and in the aggregate.

### **3. INSURANCE REQUIRED ONLY DURING PROVISION OF SERVICE PERIOD WORKS**

- (1) From the Completion Date and thereafter until the Agreement is terminated, Project Co shall obtain and maintain at its own expense, the following policies of insurance:
  - (a) Commercial Property Insurance written on IBC Commercial Building, Equipment and Stock Broad Form or its equivalent including the perils of flood, earthquake and sewer back – up. Insurance will be placed for 100% of building and contents values with appropriate limits, as established by Project Co, on business interruption / Extra expense, Accounts Receivables, Professional Fees, Transit, Valuable papers and Electronic Data Processing Equipment, related Data and Media. Commercial property includes all property and assets of others in Project

Co's care, custody or control. Such insurance shall have a limit of not less than the full replacement cost of the Project Facilities, the Project Assets and all property and assets of others in Project Co's care, custody or control.

Insurance should include but not be limited to coverage for the following:

- Building
- Contents
- Business Interruption / Extra Expense
- Accounts Receivable
- Blanket By-Laws
- Debris Removal
- Electronic Data Processing Equipment and related Data and Media (coverage includes breakdown of equipment and erasure of data)
- Inflation Protection
- Ingress / Egress
- Off Premises Power
- Pollution (First party Coverage)
- Professional Fees
- Transit
- Valuable Papers

Should any contents become the responsibility of Project Co prior to the Completion Date then Project Co shall obtain and maintain insurance from the date it takes possession of such contents.

- (b) Boiler and Machinery – perils of mechanical breakdown, explosion of boilers and pressure vessels.

Insurance should include but not be limited to coverage for the following:

- Boilers
- Pressure Vessels
- Heating, Ventilation and Air – Conditioning Equipment

- (c) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners' & contractors' protective liability, blanket contractual liability, premises liability, employers' liability, contingent employer's liability and broad form property damage coverage having an inclusive limit of not less than \$[REDACTED] per occurrence products and completed operations only aggregated, wording in the policy to include a "hostile fire" exception to Pollution exclusion;

Abuse is not excluded.

- (d) Comprehensive Crime Insurance, giving broad form coverage that:

(i) has an inclusive limit of not less than \$[REDACTED] on Employee Dishonesty Coverage and \$[REDACTED] on all other crime coverages;

(ii) adequately protects against loss of monies, securities, Project Assets and other assets of HMQ or MAG that is in Project Co's care, custody, and control, provided, however, that such coverage shall specifically exclude any assets of any other person located within the Project Facilities to the extent that such assets has come within the control of any court or administrative tribunal as evidence filed with or submitted to the court or tribunal in connection with any proceeding; and

(iii) covers:

- Dishonesty, Disappearance and Destruction, of any such assets identified in item (d) above;
- Both loss inside and outside the premises of the Project Facilities;
- Loss of Money Orders and Counterfeit Paper Currency;
- Depositors forgery; and
- Computer Fraud;

- (e) (Third Party ) Pollution Liability Insurance or Environmental Impairment Liability Insurance, as may be applicable, covering the execution of the Service Period Works, including excavation and the installation of all utilities and other services and the supply of all tangibles, providing coverage in an amount of not less than \$[REDACTED] per claim or per occurrence and in the aggregate.

#### **4. GENERAL REQUIREMENTS WITH RESPECT TO INSURANCE POLICIES**

- (1) All policies of insurance within the scope of this Schedule I shall be subject to the review and approval by HMQ and its insurance advisors, and unless HMQ otherwise agrees in writing shall meet the following requirements:

- (a) Except in the case of automobile liability insurance, non-owned liability insurance and errors and omissions liability insurance, each policy shall include coverage for HMQ as an additional insured, as well as coverage for any architect, engineer or other consultant employed or retained by HMQ, all subcontractors and the employees of Project Co and those persons. HMQ reserves the right to require Project Co to add further parties as additional insured persons, but shall be responsible for any additional cost thereby incurred. In respect of each policy and type of insurance required to be maintained by Project Co pursuant to Section 1(2) of this Schedule I, HMQ shall be named as loss payee as its interest may appear. Except for third party liability insurance, each policy shall have Project Co as a named insured and the Senior Lenders as additional insured(s) to the extent of an insurable interest and shall have the Senior Lenders as Mortgagee/Loss payee, as their interests may appear from time to time.
- (b) Each policy shall be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to HMQ, that is licensed to carry on the business of providing such insurance in Ontario.
- (c) Each policy shall be maintained continuously during the term specified (or in default of such specification, for the full Agreement Term), or for such further reasonable period of time as may be required after expiry of the Agreement Term, as deemed necessary by HMQ. Where HMQ requires insurance to be provided after the expiry of the Agreement Term, it shall be responsible for all costs incurred by Project Co in procuring that insurance.
- (d) Policies shall:
  - (i) provide for a deductible amount set forth in Appendix 1 of this Schedule I;
  - (ii) contain cross liability and severability of interest provisions, as may be applicable;
  - (iii) preclude subrogation claims against HMQ and any other person insured under the policy; and
  - (iv) provide that at least ninety (90) days prior written notice (twenty (20) days in the case of automobile liability insurance) shall be given to the HMQ by the insurer before the insurer or Project Co takes any steps to cancel, restrict or terminate the insurance coverage thereunder or any part thereof.
- (e) HMQ may waive any or all of the above requirements to the extent that insurance of this type is not currently available in the Ontario insurance market at any relevant time, or is not available at reasonable cost, without prejudice to HMQ's right to insist that all other requirements be complied with, and without prejudice to any future right to insist on the provision of compliant insurance, where at any subsequent time, such insurance again becomes available in the Ontario insurance market or available at reasonable cost.

- (2) HMQ reserves the right to require Project Co to purchase such additional insurance coverage as the Province's Risk Management Services Office may reasonably require. HMQ reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements (taking into consideration such matters as the nature of the Service Period Works, contract value, industry standards, and availability of insurance) as HMQ may reasonably require from time to time. The costs of any such additional insurance shall be borne by HMQ. Subject to Section 7 of this Schedule I, Project Co shall comply with all reasonable requirements that may be given from time to time by HMQ with respect to the manner of procuring insurance.
- (3) Any insurance coverage acquired hereunder and under the Agreement shall in no manner discharge, restrict or limit the liabilities assumed by Project Co under the Agreement, and in particular shall not limit such liability to the dollar limit of the insurance coverage.
- (4) Project Co shall pay all premiums on the policies as they become due and shall provide confirmation of such payment as HMQ may reasonably request. HMQ shall pay all premiums on the additional policies or coverages which HMQ requires Project Co to purchase pursuant to Section 4(2) of this Schedule I.
- (5) Project Co shall deposit with HMQ such evidence of its insurance:
  - (a) at the time of execution of the Agreement (to the extent applicable), or
  - (b) in any event prior to commencing each relevant Service Period Works or performing each relevant aspect of Project Works with respect to the Project.

Proof of insurance shall be provided by way of an original Certificate of Insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to name/description of HMQ contact, name of insurer, name of broker, name of insured, name of additional insured(s) and loss payees as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable and cancellation/termination provisions. Certified copies of the entire contents of all relevant insurance policies required to be in place prior to commencement of the Project Works shall be provided to HMQ no later than ninety (90) days after the Date of Agreement. Certified copies of the entire contents of all relevant insurance policies required to be in place prior to commencement of the Service Period Works shall be provided to HMQ later than ninety (90) days after Completion Date.

- (6) Project Co shall not do or omit to do anything that would impair or invalidate any of the insurance policies.
- (7) Delivery to and examination or approval by HMQ of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve Project Co of any of its indemnification or insurance obligations under the Agreement. HMQ shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise Project Co in the event such insurance coverage is not

in compliance with the requirements set out in this Schedule I or otherwise in the Agreement.

- (8) Claims reported to Project Co by a third party or by HMQ shall be promptly investigated and in any event within two (2) Business Days of receipt of notification, be reported to the relevant insurer for its review and response to the claimant. Failure to follow this procedure shall permit HMQ to investigate and resolve any claims and offset the resultant costs against any monies due to Project Co, from time to time, under the Agreement.
- (9) If an insurer or an insurer's consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Agreement, then HMQ and Project Co shall, and shall require the Province Persons 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 consultants to attend meetings between Project Co and HMQ (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).
- (10) Project Co shall be responsible and liable for the payment of deductibles under all policies of insurance.
- (11) Project Co shall ensure that all policies of insurance required to be obtained by Project Co pursuant to this Schedule I shall exclude The City of Oshawa as a named insured and as an additional insured thereunder.

## **5. PROCEEDS OF INSURANCE**

Each of Project Co and HMQ acknowledge and agree that the proceeds of any policies of insurance shall be distributed as follows:

- (a) in the case of third party legal liability or employers' liability insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which such proceeds are payable;
- (b) in the case of any property, builders' risk, "All Risk" insurance, boiler and machinery insurance or property insurance, to repair, restore or replace the assets in respect of which such proceeds of insurance have been paid so that such assets are in the condition required pursuant to the Agreement; and
- (c) in the case of all other insurance, in accordance with the terms of the relevant policy.

## **6. FAILURE TO MEET INSURANCE REQUIREMENTS**

- (1) If Project Co fails to procure or maintain the insurance required by this Schedule I, fails to furnish to HMQ a certified copy of each policy required to be obtained by this

Schedule I or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then HMQ 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 HMQ's option, be payable by Project Co to HMQ on demand or be deducted by HMQ from the next payment or payments otherwise due to Project Co.

- (2) If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or cancelled, then, if directed by HMQ, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

## 7. UNINSURABLE RISKS

- (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 I and for which, at any time, after the Date of Agreement, either:
  - (a) the insurance required pursuant to this Schedule I (including on the terms and conditions specified for such insurance herein) is not available in relation to that risk from insurers licenced in the Province of Ontario; 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 Canadian insurance market.

Project Co has the onus of demonstrating to HMQ's reasonable satisfaction, that the foregoing definition applies to a particular risk.

- (2) Project Co shall notify HMQ as soon as possible and, in any event, within fifteen (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 HMQ with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- (3) Project Co and HMQ shall, as soon as possible following the provision of the notice referred to in Section 7(2) of this Schedule I, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and HMQ are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- (4) In the event that Project Co and HMQ, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within fifteen (15) Business Days of the expiry of the period referred to in Section 7(2) of this Schedule I, HMQ 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 Agreement shall continue in full force and effect; or

- (b) terminate the Agreement in accordance with Section 38.5 of the Agreement as if such termination had occurred as a result of the parties having failed to reach agreement in accordance with Section 38.5 of the Agreement following the occurrence of a Force Majeure Event and, in accordance with **Schedule G (Calculation of Termination Payments)**, pay to Project Co an amount equal to the Force Majeure Termination Sum.
- (5) On the occurrence of an Uninsurable Event, HMQ may, in its absolute discretion, either:
  - (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 Event had the relevant insurance continued to be available, in which case the Agreement shall continue in full force and effect; or
  - (b) terminate the Agreement in accordance with Section 38.5 of the Agreement as if such termination had occurred as a result of the parties having failed to reach agreement in accordance with Section 38.5 of the Agreement following the occurrence of a Force Majeure Event and, in accordance with **Schedule G (Calculation of Termination Payments)**, pay to Project Co an amount equal to the Force Majeure Termination Sum.
- (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 one hundred and eighty (180) days and use reasonable efforts to obtain 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) Project Co shall be relieved of its obligations to maintain insurance in respect of the Uninsurable Risk.
- (7) Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain insurance in accordance with the requirements of this Schedule I in respect of the risk and the provisions of this Section 7 shall no longer apply to such risk.
- (8) From and after the Completion Date, the parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule I, and may make mutually agreed changes thereto.
- (9) The term "**Uninsurable Event**" means any event which arises directly and solely from an Uninsurable Risk.

## 8. BENCHMARKING OF INSURANCE COSTS

(1) For purposes of this Section 8, the following terms shall have the following meanings:

- (a) **"Actual Relevant Insurance Cost"** means the aggregate of the annual insurance premium costs by Project Co to obtain, maintain or replace the Relevant Insurance during the Insurance Review Period, and including insurance premium tax and all broker's fees and commissions.
- (b) **"Base Cost"** means \$[REDACTED], being the amount as agreed at the Date of Agreement and set out in the Financial Model which represents the insurance costs (including insurance premium tax and all broker's fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Completion Date, expressed in nominal terms as at the Date of Agreement.
- (c) **"Base Relevant Insurance Cost"** means the aggregate of the Base Costs which were (at the Date of Agreement) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period.
- (d) **"Independent Third Party"** has the meaning given in Section 8(3) of this Schedule I.
- (e) **"Insurance Adjustment"** means the amount determined in accordance with Section 8(7) of this Schedule I (subject to Section 8(9) of this Schedule I).
- (f) **"Insurance Cost Differential"** means an amount equal to ARIC – BRIC where:  
  
ARIC is the Actual Relevant Insurance Cost; and  
  
BRIC is the Base Relevant Insurance Cost.
- (g) **"Insurance Report"** has the meaning given in Section 8(3) of this Schedule I.
- (h) **"Insurance Review Date"** means each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Agreement Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the Expiry Date.
- (i) **"Insurance Review Period"** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the first anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Agreement 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 Agreement Term.
- (j) **"Joint Insurance Cost Report"** has the meaning given in Section 8(2) of this Schedule I.

- (k) **"Relevant Insurance"** means all policies of insurance to be obtained by Project Co in accordance with Section 3 of this Schedule I.
  - (l) **"Relevant Insurance Inception Date"** means the date on which the Relevant Insurance is first providing active insurance cover to Project Co, being a date no earlier than the Completion Date.
- (2) No later than sixty (60) days prior to each Insurance Review Date, Project Co's insurance broker shall, at Project Co's sole cost and expense, prepare a report on behalf of both Project Co and HMQ (the **"Joint Insurance Cost Report"**), which contains the following information for the relevant Insurance Review Period:
- (a) a full breakdown of the Actual Relevant Insurance Cost;
  - (b) a full breakdown of the Base Relevant Insurance Cost;
  - (c) the opinion of Project Co's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor, including premium calculations and other supporting documentation to the reasonable satisfaction of HMQ;
  - (d) the calculation of the Insurance Cost Differential;
  - (e) evidence satisfactory to HMQ, acting reasonably, of any changes to circumstances generally prevailing in the Ontario insurance market that are claimed to account for the Insurance Cost Differential;
  - (f) evidence satisfactory to HMQ, acting reasonably, including by providing supporting documentation (such documentation to include particulars as to the claims and the Actual Relevant Insurance Cost for each of the intervening Contract Years since the previous Insurance Review Date) as to whether or not any component of the Actual Relevant Insurance Cost is due solely or in part to claims matters relating to Project Co, and if so, its estimate as to any portion of the Actual Relevant Insurance Cost changes that reflects claims matters relating to Project Co.

For greater certainty, the amounts comprising the Actual Relevant Insurance Cost will be provided in the aggregate and broken down with the amounts for each component insurance comprising the Relevant Insurance separately identified.

- (3) At either HMQ's or Project Co's election in writing within fourteen (14) days of receiving the Joint Insurance Cost Report, HMQ will, within thirty (30) days thereafter, retain a person (who will be subject to Project Co's reasonable approval) unrelated to either HMQ or Project Co (**"Independent Third Party"**) to prepare in a manner impartial to HMQ and to Project Co, and to deliver contemporaneously to HMQ and to Project Co the report described in Section 8(5) of this Schedule I (the **"Insurance Report"**), within forty-five (45) days or such other reasonable period of time after the Insurance Review Date, but in any event by no later than seventy-five (75) days after the

Insurance Review Date, unless such time period is further extended to reflect the additional time period, if any, required to resolve any dispute under Section 8(4) of this Schedule I, and in that event by no later than such extended time period.

- (4) In the event that Project Co fails, acting reasonably, to approve a person proposed by HMQ to act as the Independent Third Party, the reasons for such failure, and any substitute person proposed by either or both of HMQ and Project Co, will be submitted to the Dispute Resolution Procedure for determination.
- (5) The Insurance Report to be delivered by the Independent Third Party will:
  - (a) examine the reasons as to why Project Co's Actual Relevant Insurance Costs have changed since the previous Insurance Review Date, including an estimate as to the portion, if any, of the Actual Relevant Insurance Cost changes that reflects claims matters relating to Project Co, and
  - (b) review and consider relevant market factors, including industry standard premium costs for insurance coverages equivalent to the Insurance Coverage over the period since the previous Insurance Review Date, adjustments to policy limits as a result of inflation and/or deflation and increases in policy limits by prudent insureds.
- (6) HMQ and Project Co will share equally the fees and costs of the Independent Third Party.
- (7) By not later than ninety (90) days, or if such time period is extended to reflect the additional time period, if any, required to resolve any dispute under Section 8(4) of this Schedule I, then by not later than such extended time period, after each Insurance Review Date, HMQ will complete the calculations required to make the determinations and arrive at the portion of the Insurance Cost Differential which will be used to adjust the Monthly Service Payment in respect of the Contract Month following its determination by deducting the portion of the Insurance Cost Differential that is attributable to Project Co's claims history.
- (8) For the purposes of the calculations made under Section 8(7) of this Schedule I, HMQ will use the information provided by Project Co's insurers pursuant to Section 8(2) of this Schedule I (unless an Insurance Report has been prepared, in which case HMQ will use the information provided in the Insurance Report) to determine the portion, if any, of the Actual Relevant Insurance Cost changes that reflects claims matters relating to Project Co.
- (9) If either HMQ or Project Co disagrees with any of the calculations delivered under Section 8(5) of this Schedule I, or otherwise in respect of the Insurance Report delivered by the Independent Third Party under Section 8(5) of this Schedule, the disputing party shall notify the other party within thirty (30) days of receipt of the Insurance Report and if HMQ and Project Co have not resolved the disagreement within thirty (30) days of receipt of the notification of disagreement, the matter will be considered a dispute and shall be resolved by submission to the Dispute Resolution Procedure for determination under the Agreement.

- (10) The Insurance Adjustment will be applied in the Contract Month following its determination by an adjustment to the Monthly Service Payment made in accordance with **Schedule F (Payment Mechanism)**.

**9. DEFINED TERMS**

Terms used herein and not otherwise defined have the meanings ascribed thereto in the Agreement.

**Schedule 1**

**Deductible Amounts**

<b>Type of Insurance*</b>	<b>Deductible (per claim/occurrence, as applicable)</b>
<b>Part I – Insurance Required for Full Term of the Entire Agreement</b>	
1. Workplace Safety and Insurance Board Coverage (s. 1(1)(a) of Schedule I)	As per current Government Regulations
2. Standard Form Automobile Liability Insurance (s. 1(1)(b) of Schedule I)	<b>[\$REDACTED]</b> (Property Damage)
3. Non-Owned Automobile Liability Insurance (s. 1(1)(c) of Schedule I)	<b>[\$REDACTED]</b> (Property Damage)
<b>Part II – Insurance Required for Project Works</b>	
1. Builders' Risk/Course of Construction Insurance (s. 2(1)(a) of Schedule I) <ul style="list-style-type: none"> <li>(a) All-Risk</li> <li>(b) Flood</li> <li>(c) Earthquake</li> <li>(d) Foundation Work</li> <li>(e) Testing &amp; Commissioning</li> </ul>	<ul style="list-style-type: none"> <li>(a) <b>[\$REDACTED]</b></li> <li>(b) <b>[\$REDACTED]</b></li> <li>(c) <b>[\$REDACTED]</b> of the building value or <b>[\$REDACTED]</b>, whichever is greater</li> <li>(d) <b>[\$REDACTED]</b></li> <li>(e) <b>[\$REDACTED]</b></li> </ul>
2. Wrap-up Liability Insurance (s. 2(1)(b) of Schedule I)	<b>[\$REDACTED]</b>
3. Project Specific Contractor's Protective Professional Indemnity & Liability Insurance (s. 2(1)(c) of Schedule I)	<b>[\$REDACTED]</b>
4. Aircraft Liability Insurance (s. 2(1)(d) of Schedule I) <ul style="list-style-type: none"> <li>(a) Non-Owned Aircraft Liability Insurance</li> <li>(b) Owned Aircraft Liability Insurance</li> </ul>	<ul style="list-style-type: none"> <li>(a) <b>[\$REDACTED]</b></li> <li>(b) <b>[\$REDACTED]</b></li> </ul>
5. Equipment Floater All Risks Insurance (s. 2(1)(e) of Schedule I)	<b>[\$REDACTED]</b>

6. (Third Party ) Pollution Liability Insurance or Environmental Impairment Liability Insurance (s. 2(1)(f) of Schedule I)	<b>[\$REDACTED]</b> (Self-Insured Retention)
<b>Part III – Insurance Required Only During Provisions of Service Period Works</b>	
1. Commercial Property Insurance (s. 3(1)(a) of Schedule I)	<b>[\$REDACTED]</b>
2. Boiler and Machinery (s. 3(1)(b) of Schedule I)	<b>[\$REDACTED]</b>
3. Commercial General Liability Insurance (s. 3(1)(c) of Schedule I)	<b>[\$REDACTED]</b>
4. Comprehensive Crime Insurance (s. 3(1)(d) of Schedule I)	<b>[\$REDACTED]</b>
5. (Third Party ) Pollution Liability Insurance or Environmental Impairment Liability Insurance (s. 3(1)(e) of Schedule I)	<b>[\$REDACTED]</b> (Self-Insured Retention)

\*Insurance requirements are set forth in Schedule I of Agreement.

**SCHEDULE J**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 1<sup>st</sup> day of March, 2007

**BETWEEN:**

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent  
for HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**("HMQ")**

**AND:**

**BNY TRUST COMPANY OF CANADA, a trust company incorporated  
under the laws of Canada, for itself and as trustee for and on behalf of the  
Bondholders**

**(the "Trustee")**

**AND:**

**ABN AMRO BANK N.V., CANADA BRANCH, as the issuing bank (in such  
capacity, the "LC Provider") under the Construction LC Agreement (as  
defined below)**

**AND:**

**ABN AMRO BANK N.V., CANADA BRANCH, as the lender (in such  
capacity, the "Line of Credit Lender") under the Line of Credit Agreement  
(as defined below)**

**AND:**

**ACCESS JUSTICE DURHAM LTD., a corporation incorporated under the  
laws of Ontario**

**("Project Co").**

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. Under the Senior Financing Agreements, financing is to be provided to Project Co by the Senior Lenders to finance the Project Operations.



- C. Each of the Trustee, the LC Provider and the Line of Credit Lender has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with HMQ 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.

**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:

- (a) "**Affiliate**" has the meaning given in the Project Agreement.
- (b) "**Applicable Law**" has the meaning given in the Project Agreement.
- (c) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) any Senior 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 Trustee or any of the Senior Lenders; or
  - (vi) any other person approved by HMQ (such approval not to be unreasonably withheld or delayed).
- (d) "**Appointed Representative Notice**" has the meaning given in Section 8(b).
- (e) "**Bondholders**" has the meaning given in the Trust Indenture.
- (f) "**Business Day**" has the meaning given in the Project Agreement.
- (g) "**Completion Date**" has the meaning given in the Project Agreement.
- (h) "**Completion Longstop Date**" has the meaning given in the Project Agreement.
- (i) "**Confidential Information**" has the meaning given in the Project Agreement.

- (j) **"Construction Contractor's Direct Agreement"** means the Direct Agreement between HMQ, Project Co, the Construction Subcontractor and the applicable guarantor in the form set out in Schedule Q of the Project Agreement.
- (k) **"Construction LC Agreement"** means the \$[REDACTED] letter of credit agreement made on or about the date hereof between Project Co and the LC Provider.
- (l) **"Construction Subcontract"** has the meaning given in the Project Agreement.
- (m) **"Construction Subcontractor"** has the meaning given in the Project Agreement.
- (n) **"Crown"** means Her Majesty the Queen in right of Ontario.
- (o) **"Deductions"** has the meaning given in the Project Agreement.
- (p) **"Default Notice"** has the meaning given in Section 7(b)(i).
- (q) **"Direct Agreements"** has the meaning given in the Project Agreement.
- (r) **"Enforcement Action"** means (i) any acceleration of amounts due and owing to the Senior Lenders under any of the Senior Financing Agreements; and/or (ii) any enforcement proceeding or enforcement action commenced or taken by the Trustee, the LC Provider or the Line of Credit Lender under any of the Security Documents.
- (s) **"Enforcement Event"** means an event of default under the Senior Financing Agreements or the Security Documents, or any other event which permits an Enforcement Action.
- (t) **"Exercise Date"** has the meaning given in Section 12(b).
- (u) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (v) **"Indebtedness Notice"** has the meaning given in Section 7(b)(ii).
- (w) **"Lenders' Direct Agreement"** means this lenders' direct agreement, as amended, supplemented or replaced from time to time in accordance with the terms hereof.
- (x) **"Line of Credit Agreement"** means the \$[REDACTED] line of credit agreement dated on or about the date hereof between Project Co and the Line of Credit Lender.
- (y) **"Notice Period"** means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (z) **"Novation Date"** has the meaning given in Section 10(a).
- (aa) **"Novation Notice"** has the meaning given in Section 10(a).

- (bb) "**Operating Subcontract**" has the meaning given in the Project Agreement.
- (cc) "**Party**" means any of HMQ, Project Co, the Trustee, the LC Provider or the Line of Credit Lender, and "**Parties**" means all of HMQ, Project Co, the Trustee, the LC Provider and the Line of Credit Lender.
- (dd) "**person**" has the meaning given in the Project Agreement.
- (ee) "**Project**" has the meaning given in the Project Agreement.
- (ff) "**Project Agreement**" means the project agreement made on or about the date hereof between HMQ and Project Co., as the same may be amended from time to time in accordance with its terms and the terms of this Lenders' Direct Agreement.
- (gg) "**Project Assets**" has the meaning given in the Project Agreement.
- (hh) "**Project Co**" means Access Justice Durham Ltd.
- (ii) "**Project Co Default**" has the meaning given in the Project Agreement.
- (jj) "**Project Collateral**" means Project Agreement, the Sublease and any and all of the assets that Project Co is required to convey and release to HMQ in accordance with Section 37.5 of the Project Agreement, including without limitation, the Project Facilities and Project Assets.
- (kk) "**Project Documents**" has the meaning given in the Project Agreement.
- (ll) "**Project Facilities**" has the meaning given in the Project Agreement.
- (mm) "**Project Operations**" has the meaning given in the Project Agreement.
- (nn) "**Project Works**" has the meaning given in the Project Agreement.
- (oo) "**Province**" has the meaning given in the Project Agreement.
- (pp) "**Refinancing**" has the meaning given in the Project Agreement.
- (qq) "**Replacement Specified Senior Lender**" has the meaning given in Section 13(e).
- (rr) "**Restricted Person**" has the meaning given in the Project Agreement.
- (ss) "**Security**" means the security interests granted by Project Co to the Trustee, the LC Provider and the Line of Credit Agreement pursuant to the Security Documents.
- (tt) "**Security Documents**" means all documents or agreements pursuant to which security granted by Project Co to the Senior Lenders (or any trustee or agent

thereof, including the Trustee) pursuant to or in connection with the Senior Financing Agreements, including but not limited to:

- (i) the security granted under section 5.1 of the Trust Indenture;
- (ii) the mortgage/charge granted by Project Co to and in favour of the Trustee with respect to Project Co's estate, right, title and interest in and to the Site, including Project Co's estate, right, title and interest in and to the Sublease;
- (iii) the Construction LC Agreement;
- (iv) the mortgage/charge granted by Project Co pursuant to the Construction LC Agreement to and in favour of the LC Provider with respect to Project Co's estate, right, title and interest in and to the Site, including Project Co's estate, right, title and interest in and to the Sublease;
- (v) general security agreement made on or about the date hereof between Project Co and the LC Provider in respect of the obligations under the Construction LC Agreement;
- (vi) assignment of material agreements made on or about the date hereof between Project Co and the LC Provider in respect of the obligations under the Construction LC Agreement; and
- (vii) the Line of Credit Agreement;
- (viii) the mortgage/charge granted by Project Co pursuant to the Line of Credit Agreement to and in favour of the Line of Credit Lender with respect to Project Co's estate, right, title and interest in and to the Site, including Project Co's estate, right, title and interest in and to the Sublease;
- (ix) general security agreement made on or about the date hereof between Project Co and the Line of Credit Lender in respect of the obligations under the Line of Credit Agreement;
- (x) assignment of material agreements made on or about the date hereof between Project Co and the Line of Credit Lender in respect of the obligations under the Line of Credit Agreement;
- (xi) blocked account agreement made on or about the date hereof between Project Co and the Line of Credit Lender;
- (xii) the Security Sharing Agreement made on or about the date hereof between Project Co, the Senior Lenders and ABN AMRO Bank N.V., Canada Branch; and

(xiii) the insurance trust agreement dated as of the date hereof among the parties hereto, ABN AMRO Bank N.V., Canada Branch as issuing bank under the debt service reserve letter of credit agreement and BNY Trust Company of Canada as account trustee,

in each case, as amended, supplemented or replaced from time to time.

- (uu) "**Senior Financing Agreements**" has the meaning given in the Project Agreement.
- (vv) "**Senior Lenders**" has the meaning given in the Project Agreement, and includes, for greater certainty, the Trustee as indenture trustee under the Trust Indenture, the LC Provider as issuing bank under the Construction LC Agreement and the Line of Credit Lender as lender under the Line of Credit Agreement.
- (ww) "**Service Failure Points**" has the meaning given in the Project Agreement.
- (xx) "**Service Provider**" has the meaning given in the Project Agreement.
- (yy) "**Site**" has the meaning given in the Project Agreement.
- (zz) "**Specified Senior Lender**" means the Trustee, in its capacity as initial Specified Senior Lender, or any Replacement Specified Senior Lender appointed in connection with Section 13(e) of this Agreement.
- (aaa) "**Step-In Date**" means the date on which HMQ receives a Step-In Notice from the Specified Senior Lender.
- (bbb) "**Step-In Notice**" means the notice given by the Specified Senior Lender to HMQ pursuant to Section 8(a) stating that the Specified Senior Lender is exercising its step-in rights under this Lenders' Direct Agreement.
- (ccc) "**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 HMQ has complied with its obligations in Section 7(d) of this Lenders' Direct Agreement);
  - (iii) the date that a transfer of Project Co's rights and obligations under the Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
  - (iv) if the Step-In Date occurs prior to the Completion Date, the earlier of:
    - (A) the date falling 180 days after the Completion Longstop Date; and
    - (B) the date falling two years after the Step-In Date.

- (ddd) "**Step-Out Date**" means the date falling 30 days after the date on which HMQ receives a Step-Out Notice.
- (eee) "**Step-Out Notice**" has the meaning given in Section 9(a).
- (fff) "**Subcontractor**" has the meaning given in the Project Agreement.
- (ggg) "**Subsequent Indebtedness Notice**" has the meaning given in Section 7(c).
- (hhh) "**Sub Lease**" has the meaning given in the Project Agreement.
- (iii) "**Suitable Substitute**" means a person, approved in writing by HMQ 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 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 Project Documents.
- (jjj) "**Termination Date**" has the meaning given in the Project Agreement.
- (kkk) "**Trust Indenture**" means the trust indenture as supplemented by the series "A" supplemental indenture, each made on or about the date hereof between Project Co, the Trustee and BNY Trust Company of Canada, as bond manager, as amended, varied, replaced or further supplemented from time to time in accordance with its terms and the terms of this Lenders' Direct Agreement.
- (lll) "**Warning Notice**" 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 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, 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.

- (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 Oshawa, 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 and the Project Agreement, 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 by Project Co to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid in full; provided that on the date on which all obligations which may be or become owing by Project Co to (x) the LC Provider under the Construction LC Agreement have been satisfied in full, the LC Provider, in its capacity as Senior Lender under such Construction LC Agreement shall have no further rights or obligations hereunder and it shall forthwith release and discharge its Security in respect of the Project Collateral, and (y) the Line of Credit Lender under the Line of Credit Agreement have been satisfied in full, the Line of Credit Lender, in its capacity as Senior Lender under such Line of Credit Agreement shall have no further rights and obligations hereunder and it shall forthwith release and discharge its Security in respect of the Project Collateral;
  - (ii) the Termination Date (provided that HMQ 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 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 Trustee, the LC Provider or the Line of Credit Lender, as the case may be, shall provide notice to HMQ of the date



referred to in Section 4(a)(i) with respect to the Senior Financing Agreement to which it is a party.

## **5. AGREEMENTS AND SECURITY**

- (a) Project Co, the Trustee, the LC Provider and the Line of Credit Lender shall not amend or modify the Senior Financing Agreements (to which they are party), or any of them, except where Project Co is permitted to do so pursuant to Section 2.12 of the Project Agreement.
- (b) Project Co and HMQ shall not amend or modify any of the Project Documents in any way that would materially adversely affect Project Co's ability to comply with its obligations under any of the Senior Financing Agreements without the prior written consent of the Senior Lenders, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Senior Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Senior Lenders or Project Co under the relevant agreement. Each of the Senior Lenders shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.
- (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) Each of the Trustee, the LC Provider and the Line of Credit Lender acknowledges having received a copy of the Project Agreement.
- (e) HMQ acknowledges having received copies of the Senior Financing Agreements.
- (f) HMQ 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 Project Documents.
- (g) HMQ agrees that any enforcement by the Trustee, the LC Provider or the Line of Credit Lender of a security interest in the issued share capital of Project Co granted by its shareholder(s) in favour of the Trustee, the LC Provider or the Line of Credit Lender as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Default (each term as defined in the Project Agreement) under the Project Agreement.
- (h) Project Co, the Trustee, the LC Provider and the Line of Credit Lender hereby authorize and instruct HMQ (and HMQ agrees) to pay all sums payable to Project Co under the Project Agreement to the "Revenue Account" established and maintained pursuant to the Trust Indenture, the details of which have been provided to HMQ, or to such other bank account specified by the Specified Senior Lender. Project Co and HMQ agree that upon the occurrence of an Enforcement

Event, if so directed in writing by the Specified Senior Lender, upon giving reasonable notice, HMQ shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Specified Senior Lender.

- (i) HMQ agrees that all sums payable to Project Co: (i) shall be paid by way of a separate payment for each invoice presented to HMQ by Project Co; (ii) shall be paid in accordance with Section 5.1(h); (iii) shall have the applicable invoice number noted thereon; and (iv) provide a reconciliation if HMQ has set-off amounts payable by Project Co to HMQ against such payment to Project Co. HMQ shall have no liability for any inadvertent failure to comply with the payment requirements provided for in this Section 5(i).
- (j) HMQ shall provide the Specified Senior Lender with copies of any Warning Notice, Monitoring and Rectification 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 Senior Lenders under the Senior Financing Agreements, HMQ 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) Notwithstanding any other provision in this Lenders' Direct Agreement providing for opportunities of Project Co and/or the Specified Senior Lender to prepare and provide a cure or other remedial plan to solve a problem or other Project Co Default, if at any time HMQ is entitled or required to step in and provide all or any part of the Service Period Works in accordance with Article 40 of the Project Agreement, HMQ shall be entitled to do so without restriction so that at all times during such period there is continuous courtroom services and safety and a safe environment for visitors to the Project Facilities. As soon as the event or circumstances which gave rise to HMQ's entitlement to exercise any of its rights or remedies under Article 40 of the Project Agreement is cured or remedied to the reasonable satisfaction of HMQ or a cure or other remedial plan accepted by HMQ is in effect or begins to operate, HMQ shall cease to provide or ensure the provision of all or any relevant part of the Service Period Works to the extent that it has been doing so in accordance with its entitlement under Article 40 of the Project Agreement. HMQ shall be entitled to all rights of set-off under the Project Agreement the costs of HMQ providing all or part of the Service Period Works.
- (m) Notwithstanding any termination of this Agreement, any provision hereof, or in the Security Documents, the Senior Financing Agreements or any other document or instrument of whatsoever nature or kind, immediately upon the earlier to occur of: (i) the date that each of the Senior Lenders have been irrevocably paid in full and, (ii) the Termination Date and the payment by HMQ of the total amounts, if

any, payable as compensation on termination in accordance with the Project Agreement, all Security and any other claim or interest that the Senior Lenders may have in respect of the Project Collateral shall be *ipso facto* released and discharged forever, none of the Senior Lenders shall have any further claim or interest whether under the Security or otherwise in respect of the Project Collateral and the Trustee, the LC Provider and the Line of Credit Lender shall each promptly execute and deliver any documents or instruments and take such other steps as may be reasonably necessary or desirable to give effect to the foregoing release and discharge.

## **6. ENFORCEMENT OF SECURITY BY SENIOR LENDERS**

- (a) The Trustee, the LC Provider and the Line of Credit Lender shall promptly notify HMQ of any Enforcement Event, any Enforcement Action, any notice from the Senior Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Senior Lenders under the Senior Financing Agreements or any notice from the Senior Lenders to Project Co to demand repayment thereof.
- (b) The Trustee, the LC Provider and the Line of Credit 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 Security Documents to a successor agent, trustee or lender in accordance with the terms of the Senior Financing Agreements except where:
  - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Article 30 of 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 an Affiliate of such person, is a Restricted Person or a person whose standing or activities are such that they would potentially compromise the reputation or integrity of HMQ, MAG or any other Governmental Authority or are inconsistent with the nature of the Province's justice system so as to potentially affect public confidence in the system.
- (c) Any Senior 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 Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.

## **7. TERMINATION OF PROJECT AGREEMENT BY HMQ**

- (a) Subject only to the rights expressly afforded to the Trustee, the LC Provider and the Line of Credit Lender pursuant to, and the restrictions set forth in this Section 7, HMQ 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)), HMQ shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Default unless:
  - (i) HMQ promptly delivers written notice (a "**Default Notice**") to the Specified Senior Lender setting out the Project Co Default in reasonable detail;
  - (ii) not later than 30 days after the date of a Default Notice, HMQ delivers written notice (an "**Indebtedness Notice**") to the Specified Senior Lender setting out:
    - (A) all amounts owed by Project Co to HMQ and any other existing liabilities and unperformed obligations of Project Co to HMQ of which HMQ is aware (having made reasonable enquiry), in each case, as of the date on which HMQ sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to HMQ and any other liabilities and obligations of Project Co to HMQ of which HMQ 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 Specified Senior Lender has not delivered a Step-In Notice.
- (c) At any time after HMQ sends an Indebtedness Notice but before HMQ receives a Step-In Notice, if HMQ discovers amounts that have become owing by Project Co to HMQ or any other liabilities or obligations of Project Co to HMQ that have come due but which were not included in the Indebtedness Notice, HMQ shall deliver written notice (a "**Subsequent Indebtedness Notice**") to the Specified Senior Lender setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, HMQ shall not terminate the Project Agreement on grounds:
  - (i) that the Specified Senior Lender has served a Step-In Notice or enforced any Security Document; or
  - (ii) arising prior to the Step-In Date of which HMQ was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
    - (A) the grounds arose prior to the Completion Date, and the Completion Date does not occur on or before the date falling 180 days after the Completion Longstop Date; or
    - (B) the grounds arose after the 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:

- (1) arose prior to the Step-In Date;
  - (2) is continuing and capable of being cured; and
  - (3) would have entitled HMQ 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) HMQ 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 HMQ 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 date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Specified Senior Lender; or
  - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement provided that Service 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 Service 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 except as otherwise provided in Section 10.

## **8. STEP-IN RIGHTS**

- (a) Subject to Section 8(b) and without prejudice to the rights of the Trustee, the LC Provider or the Line of Credit Lender to enforce the Security, the Specified Senior Lender may give HMQ a Step-In Notice at any time:
- (i) during which a Project Co 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 Specified Senior Lender delivers a Step-In Notice, the Specified Senior Lender, shall deliver written notice (an "**Appointed Representative Notice**") to HMQ 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 Project Documents.
- (d) During the Step-In Period, HMQ shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Project Documents. Project Co agrees to be bound by all such dealings between HMQ and the Appointed Representative to the same extent as if they had been between HMQ and Project Co.
- (e) The Senior Lenders have the right but not obligation for it or its Appointed Representative to cure any default by Project Co under the Project Agreement, and performance by the Senior Lenders or the Appointed Representative of any obligation of Project Co under the Project Agreement shall constitute due performance of that obligation. The Senior Lenders shall not, by reason only of the performance of the Senior Lenders or the Appointed Representative of any obligation of Project Co, be deemed to have assumed any obligation or liability of 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 HMQ 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 HMQ under the 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;
  - (ii) HMQ will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Project Documents; and
  - (iii) the Appointed Representative and HMQ shall be and hereby are released from all obligations and liabilities to one another under the Project Documents.

- (c) There will not be more than one Step-In Period following the issuance by HMQ 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 Specified Senior Lender may deliver to HMQ and any Appointed Representative written notice (a "**Novation Notice**"), that it wishes to transfer Project Co's rights and obligations under the Project Documents to a proposed transferee together with all information reasonably necessary for HMQ 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 HMQ receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Project Documents to the proposed transferee in accordance with the provisions of Section 10(d).
- (b) HMQ shall promptly notify the Specified Senior Lender of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. HMQ shall notify the Specified Senior Lender, in writing, as to whether the person to whom the Specified Senior Lender proposes to transfer Project Co's rights and liabilities under the Project Documents is approved by HMQ as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by HMQ of the Novation Notice and the date of receipt of any additional information requested by HMQ. For greater certainty, if HMQ fails to respond within such period, HMQ shall be deemed not to have approved the proposed transferee.
- (c) HMQ shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for HMQ to withhold its approval if:
  - (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 HMQ, 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 Subcontractor pursuant to the Project Agreement; or
  - (iii) the proposed security interests to be granted by the Suitable Substitute or to any of the Senior Lenders are materially different from the Security,

materially adversely affect the ability of the Suitable Substitute to perform under the Project Documents or have the effect of increasing any liability of HMQ, whether actual or potential.

- (d) If HMQ withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Specified Senior Lender 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 Specified Senior Lender has good cause to believe will be acceptable to HMQ, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
  - (i) Project Co and HMQ will be released from their obligations under the Project Documents to each other (except for those obligations which survive termination of the Project Agreement), and the Suitable Substitute and HMQ will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against HMQ under the Project Documents and the rights of HMQ against Project Co under the Project Documents will be cancelled (except for those obligations which survive termination of the Project Agreement) and the Suitable Substitute and HMQ will acquire those same rights against each other;
  - (iii) the Parties will enter into, and the Trustee, the LC Provider or the Line of Credit Lender, as the case may be, shall cause the Suitable Substitute and the Senior Lenders, as applicable, to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
    - (A) an agreement between HMQ and the Suitable Substitute, on substantially the same terms as the Project Agreement;
    - (B) an agreement among HMQ, the Suitable Substitute and the Senior Lenders, as applicable, on substantially the same terms as this Lenders' Direct Agreement;
    - (C) a sublease between HMQ and the Suitable Substitute, on substantially the same terms as the Sub Lease; and
    - (D) any other documents reasonably necessary or incidental to the new project agreement as may be reasonably required, in each case on substantially the same terms as the corresponding Project Documents;
  - (iv) any Service Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where HMQ was entitled



to make Deductions under Schedule F - Payment Mechanism arising from such Service 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 HMQ of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## 11. TRANSFERS

HMQ shall, at Project Co's cost and expense, take whatever action the Trustee, the LC Provider, the Line of Credit Lender, 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 Trustee, the LC Provider, the Line of Credit Lender, the Appointed Representative or the Suitable Substitute reasonably requires.

## 12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, HMQ 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 Section 12(b) to (e) 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, HMQ shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step in and/or novate the Construction Subcontract and/or the Operating Subcontract in accordance with the Direct Agreements.
- (c) Where all amounts which may be or become owing by Project Co to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid in full, the Trustee, the LC Provider and the Line of Credit Lender shall promptly release and discharge all Security in respect of any Construction Subcontract or Operating Subcontract assumed or novated by HMQ pursuant to a Direct Agreement.
- (d) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Subcontractor 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 Subcontract and/or the Operating Subcontract in respect of the period prior to the Exercise Date in relation to which the Trustee, the LC Provider or the Line of Credit Lender, acting

on behalf of Project Co, shall retain the benefit of any and all rights to all such costs, claims, damage, losses and liabilities.

- (e) Without prejudice to Sections 12(a) to (d) inclusive, HMQ 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 Subcontract and/or the Operating Subcontract) from the Construction Subcontractor or the Service Provider;
  - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Subcontractor 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 Subcontractor and/or the Service Provider;
  - (iii) compete with the rights of the Trustee, the LC Provider or the Line of Credit Lender on a winding-up or other insolvency or bankruptcy of the Construction Subcontractor or the Service Provider nor claim to be subrogated to any rights of the Trustee, the LC Provider or the Line of Credit Lender.

HMQ agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(e), it will immediately turn the same over to the Specified Senior Lender and, pending such payment, hold the same in trust for the Senior Lenders.

### **13. 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 13.
- (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 41.1 of the Project Agreement and the provisions of the Senior Financing Agreements, and shall provide written notice to HMQ, the Trustee, the LC Provider and the Line of Credit Lender 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, HMQ, the Trustee, the LC Provider and the Line of Credit Lender, each acting reasonably. HMQ, the Trustee, the LC Provider and the Line of Credit Lender shall, at Project Co's cost

and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (c) HMQ may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 41.2 of the Project Agreement, and shall provide written notice to Project Co, the Trustee, the LC Provider and the Line of Credit Lender 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 HMQ under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Project Co, the Trustee, the LC Provider and the Line of Credit Lender, each acting reasonably. Project Co, the Trustee, the LC Provider and the Line of Credit Lender shall, at HMQ's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (d) Each of the Trustee, the LC Provider and the Line of Credit Lender may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Senior Financing Agreements, and shall provide written notice to the other Parties of such assignment, transfer or other disposition. The Trustee, the LC Provider and the Line of Credit Lender, as the case may be, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with the Parties on substantially the same terms as this Lenders' Direct Agreement and the other Parties shall enter into such new agreement with the assignee. The other Parties shall, at the Trustee's, the LC Provider's or the Line of Credit Lender's cost and expense, as the case may be, do all things and execute all further documents as may be necessary in connection therewith.
- (e) The initial Specified Senior Lender shall be the Trustee. Notwithstanding Section 13(d) or the foregoing, the Trustee (or any Replacement Specified Senior Lender, if applicable) may designate, by notice given to each other party hereto any other Senior Lender as the "Specified Senior Lender"; provided that if the designated Senior Lender consents in writing (which consent shall be delivered to each party hereto) to be the Specified Senior Lender, then the designated Senior Lender (the "**Replacement Specified Senior Lender**") shall be recognized for the purpose of this Agreement as the Specified Senior Lender and shall have all the rights and obligations of the Specified Senior Lender to the exclusion of the initial Specified Senior Lender or any predecessor Specified Senior Lender.

#### 14. INSURANCE

- (a) Each of Project Co, the Trustee, the LC Provider, the Line of Credit Lender and HMQ acknowledges and agrees that the proceeds of any policies of insurance shall be distributed as follows:



and to: Babcock & Brown LP  
2 Harrison Street  
6<sup>th</sup> Floor  
San Francisco CA 94105

Fax: [REDACTED]

Attn: Treasurer

If to LC Provider: ABN AMRO Bank N.V., Canada Branch  
79 Wellington Street West  
Suite 1500  
TD Centre, P.O. Box 114  
Toronto, ON M5K 1G8

Attn.: Chief Risk Officer

If to Line of Credit Lender: ABN AMRO Bank N.V., Canada Branch  
79 Wellington Street West  
Suite 1500  
TD Centre, P.O. Box 114  
Toronto, ON M5K 1G8

Attn.: Chief Risk Officer

- (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(c)(ii) and 15(d), a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing. Subject to Section 15(c)(i), a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
  - (i) If any notice delivered by hand is so delivered 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.
  - (ii) 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.

- (d) If any notice delivered by hand is so delivered 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.

## **16. 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.

## **17. 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.

## **18. 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. The obligations of the Senior Lenders hereunder are several obligations and not joint and several obligations.

## **19. 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.

**20. 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.

**21. 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.

**22. 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**23. DISPUTE RESOLUTION PROCEDURE**

The Parties agree that the dispute resolution procedure provided for in Article 43 of the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

**24. 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.

**25. 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.

**26. 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 the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

**27. CONFIDENTIALITY**

Each of the Trustee, the LC Provider and the Line of Credit Lender agrees to comply with the obligations imposed on Project Co by the provisions of Section 48.6 of the Project Agreement (subject to Section 48.7) shall apply, *mutatis mutandis*, provided that each of the Trustee, the LC Provider and the Line of Credit Lender will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Trustee, the LC Provider and the Line of Credit Lender, as the case may be, to comply with Applicable Law.

**28. HMQ 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 HMQ under this Lenders' Direct Agreement (including, without limitation, review of all documentation submitted by Project Co to HMQ for review, approval, comment, evaluation or otherwise as described in this Lenders' Direct Agreement, engage in discussions, consultations and meetings with Project Co, the Trustee, the LC Provider, the Line of Credit Lender, the Appointed Representative and/or the Suitable Substitute, submitting notices and documentation to HMQ, issuances of notices and documentation from HMQ and related matters) and Project Co, the Trustee, the LC Provider, the Line of Credit Lender, the Appointed Representative and the Suitable Substitute may deal exclusively with such 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 Trustee, the LC Provider and the Line of Credit Lender in writing that OIPC is no longer the person designated by HMQ 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 Trustee, the LC Provider and the Line of Credit Lender 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. Each of Project Co, the Trustee, the LC Provider and the Line of Credit Lender acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 28.



**IN WITNESS WHEREOF** the Parties have executed this Lenders' Direct Agreement as of the date first above written.

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent for HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**BNY TRUST COMPANY OF CANADA, in its capacity as indenture trustee**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**ABN AMRO BANK N.V., CANADA BRANCH, in its capacity as Issuing Bank**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**ABN AMRO BANK N.V., CANADA BRANCH, in its capacity as Line of Credit Lender**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**ACCESS JUSTICE DURHAM LTD.**

Per:

\_\_\_\_\_  
Name:

Title:

SCHEDULE K

INITIAL FINANCING AGREEMENTS

**A. Senior Financing Agreements**

**Bond Financing**

1. Trust Indenture between Project Co, BNY Trust Company of Canada, as indenture trustee (the "**Trustee**"), and BNY Trust Company of Canada, as bond manager (the "**Bond Manager**").
2. Series A Supplemental Indenture between Project Co, the Trustee and the Bond Manager.
3. Charge/Mortgage made by Project Co in favour of the Trustee.

**Construction Letter of Credit Facility**

4. Letter of Credit Agreement between Project Co and ABN AMRO Bank N.V., Canada Branch ("**ABN AMRO**"), as issuing bank ("Construction LC Issuing Bank").
5. Charge/Mortgage made by Project Co in favour of the Construction LC Issuing Bank.
6. Assignment of Material Agreements between Project Co and the Construction LC Issuing Bank.
7. General Security Agreement between Project Co and the Construction LC Issuing Bank.

**Line of Credit Facility (FFE and Change Order Threshold)**

8. Line of Credit Agreement between Project Co and ABN AMRO as lender ("Line of Credit Lender").
9. Charge/Mortgage made by Project Co in favour of the Line of Credit Lender.
10. Assignment of Material Agreements between Project Co and the Line of Credit Lender.
11. General Security Agreement between Project Co and the Line of Credit Lender.
12. Blocked Account Agreement between Project Co and the Line of Credit Lender.

**General**

13. Security Sharing Agreement between Project Co, the Construction LC Issuing Bank, the Line of Credit Lender, ABN AMRO as debt service reserve letter of credit issuing bank (the "Initial Debt Service Reserve LC Issuing Bank") and the Trustee.

**B. Initial Financing Agreements (excluding Senior Financing Agreements)**

1. Lenders' Direct Agreement between Project Co, the Trustee, the Construction LC Issuing Bank, the Line of Credit Lender, the Initial Debt Service Reserve LC Issuing Bank and HMQ.

2. Insurance Trust Agreement between HMQ, the Trustee, the Construction LC Issuing Bank, the Line of Credit Lender, the Initial Debt Service Reserve LC Issuing Bank, Project Co and BNY Trust Company of Canada as account trustee.
3. Debt Service Reserve Letter of Credit Agreement between Project Co and the Initial Debt Service Reserve LC Issuing Bank.
4. Assignment of Material Agreements between Project Co and the Initial Debt Service Reserve LC Issuing Bank.
5. Security Agreement between Project Co and the Initial Debt Service Reserve LC Issuing Bank.
6. Series A Purchase Agreement between Project Co and ABN AMRO.
7. Equity Purchase Agreement between Project Co and BBPP North America S.à.r.l.

**SCHEDULE L  
FINANCIAL MODEL**

**[REDACTED]**

**SCHEDULE M**

**ENERGY MATTERS**

**PART I**

**DEFINITIONS**

Capitalized terms used herein and not otherwise defined have the meanings attributed to them in the Agreement. In this Schedule (and where relevant in any other part of the Agreement) unless the context otherwise requires the following words and expressions shall have the following meanings:

**"Aggregate Actual Consumption"** means the actual consumption of all Energy Utilities as invoiced by the relevant utility companies for each Contract Year;

**"Aggregate Energy Target"** or **"AET"** means the number set forth in the Energy Target Letter submitted by Project Co with its Final Schematic Design Submission and which has been accepted by HMQ.

**"Annual Review Meeting"** means meetings between HMQ Representatives and Project Co to occur within ninety (90) days of each anniversary of the Completion Date (or such other date as may be agreed between HMQ and Project Co) to discuss Energy Services;

**"Average Annual Cooling Degree Days"** means the average annual cooling degree days for Oshawa, Ontario calculated over the 30 year period between 1976 and 2006, based on data published by Environment Canada;

**"Average Annual Heating Degree Days"** means the average annual heating degree days for Oshawa, Ontario calculated over the 30 year period between 1976 and 2006, based on data published by Environment Canada;

**"Average Unit Rate Price"** means the average price for each standard unit of each discrete Energy Utility in a Contract Year as reported by the applicable utility companies responsible for the supply of such Energy Service;

**"BOMA Go Green Plus "** means the Building Operators and Managers Association's framework for recognizing environmental best practices in existing buildings;

**"Commercial Building Incentive Program"** or **"CBIP"** means an incentive program from Natural Resources Canada;

**"Corrected Aggregate Energy Consumption"** means, for a Contract Year, the sum of CAECH for each discrete Energy Service and CAECC for each discrete Energy Service plus all non-

heating and non-cooling Energy Utilities consumption at the Project Facilities for such Contract Year;

**"Corrected Aggregate Energy Consumption Cooling"** or **"CAECC"** means the sum of the Corrected Discrete Energy Consumption for each of the discrete Energy Utilities for cooling energy, calculated in accordance with Section 5.6.2;

**"Corrected Aggregate Energy Consumption Heating"** or **"CAECH"** means the sum of the Corrected Discrete Energy Consumption for each of the discrete Energy Utilities for heating energy, calculated in accordance with Section 5.6.1;

**"Corrected Discrete Energy Consumption"** means the Discrete Energy Service Actual Consumption for each discrete Energy Service (calculated for each discrete Energy Service) corrected for each Contract Year in accordance with this Schedule M to reflect the climatic conditions for that Contract Year;

**"Discrete Energy Service Actual Consumption"** means the consumption of an individual Energy Service at the Project Facilities as invoiced by the relevant utility company for each Contract Year;

**"Discrete Energy Targets"** or **"DET"** means the numbers set forth in the Energy Target Letter submitted by Project Co with its Final Schematic Design Submission and which have been accepted by HMQ.

**"Energy Utilities"** means energy/power including electricity, natural gas, fuel, oil and any other energy source used at the Project Facilities;

**"Energy Service"** means any metered provision of Energy Utilities at the Project Facilities;

**"Energy Analysis Report"** has the meaning given to it in Section 5 of this Schedule M;

**"Gainshare Adjustment"** means the amount payable by HMQ to Project Co (which amount will be included in the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with Part B of **Schedule F (Payment Mechanism)**) based on Energy Utilities consumption for each discrete Energy Service that falls outside the set bands set out in Part III of this Schedule M;

**"High Cost Measures"** means, in respect of a Contract Year, energy saving measures that incur capital expenditure with a Simple Payback of greater than 36 months;

**"Low Cost Measures"** means, in respect of a Contract Year, energy saving measures that incur capital expenditure with a Simple Payback of no greater than 36 months and are considered to be revenue items as opposed to capital investment measures;

**"Model National Energy Code for Buildings"** or **"MNECB"** means the code as developed by the National Research Council of Canada and published in 1997. Compliance to this code is

demonstrated by using a performance based computer simulation tool and by following the "Procedures for Modelling buildings to MNECB and CBIP, version 3.0";

**"No Cost Measures"** means energy savings measures, including those related to good house-keeping, involving no material additional expenditure and/or no capital expenditure to carry out;

**"Painshare Adjustment"** means the deduction which may be claimed by HMQ from Project Co (which amount will be deducted from the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with Part B of **Schedule F (Payment Mechanism)** based on Energy Utilities consumption for each discrete Energy Service which falls outside the bands set out in Part III of this Schedule M.

**"Simple Payback"** means the number of years after which an investment will have paid for itself. Simple Payback is calculated by dividing the initial cost of the retrofit by the energy cost savings. Those projects with the shortest paybacks are assumed to be the most cost effective. Simple Payback = initial cost of energy retrofit / energy savings.

## SCHEDULE M

### PART II

#### PROCEDURES FOR DETERMINING ENERGY COST SHARING

- 1.0** HMQ will reimburse Project Co for the cost of consumption and use by Project Co of Energy Utilities at the Project Facilities based on service invoices provided to HMQ as part of the Monthly Service Payment Invoices; such amount to be paid by HMQ as part of the Monthly Service Payment at the time(s) set forth in the Agreement. For purposes of optimizing Energy Utilities costs, HMQ may, at any time and from time to time, direct Project Co to use a particular type of fuel energy source at the Project Facilities.
- 2.0** The Discrete Energy Targets shall form the normalized thirty (30) year benchmark for calculating the Energy Services cost sharing in respect of each discrete Energy Service at the Project Facilities. The Discrete Energy Service Actual Consumption for each discrete Energy Service shall be corrected to reflect actual degree days for each Contract Year. The Corrected Discrete Energy Consumption for each discrete Energy Service shall be used to calculate Painshare Adjustments and Gainshare Adjustments. The Aggregate Energy Target and the Discrete Energy Targets are immutable except by the process described in Section 6 of this Schedule M.
- 3.0** Project Co shall provide HMQ with a draft Energy Analysis Report within ninety (90) days following the end of each Contract Year, which report shall include, among other things, the records to support fully such draft Energy Analysis Report. The required format and required content of the draft Energy Analysis Report is described and outlined in Section 5.0 of this Schedule M.



- 3.1** As soon as practicable and in any event within one hundred and twenty (120) days following the end of each Contract Year, Project Co and HMQ shall convene an Annual Review Meeting to be attended by Project Co and HMQ's Representative whereby Project Co shall present to HMQ and discuss the draft Energy Analysis Report with HMQ in respect of Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding Contract Year.
- 4.0** Project Co shall assist HMQ's Representative and afford HMQ's Representative such information and access to the Project Facilities, building management system records, utility meters, and Help Desk (as such services are described in Part I of Schedule E (**Facilities Management Specifications**)) and by other means as may reasonably be required in order that HMQ's Representative may confirm the draft Energy Analysis Report provided by Project Co to determine the Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service at the Project Facilities for the Contract Year.
- 4.1** Within twenty (20) Business Days following each Annual Review Meeting, or within such period as may be otherwise agreed between HMQ's Representative and Project Co, acting reasonably:
- 4.1.1** Project Co and HMQ's Representative shall confirm its acceptance of all or any aspect of the Energy Analysis Report; and
- 4.1.2** Project Co and HMQ's Representative shall agree to any adjustments to the Aggregate Energy Target and the Discrete Energy Target(s) after taking into account load or usage changes as a result of any changes in occupancy; and
- 4.1.3** HMQ shall notify Project Co of the details of any disagreement of all or any aspect of the Energy Analysis Report, and the parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within such twenty (20) Business Day period (or such other period as may be otherwise agreed between HMQ's Representative, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.
- 4.2** Subject to the next following sentences, Project Co or HMQ, as the case may be, shall be entitled annually to a Gainshare Adjustment or Painshare Adjustment, as the case may be, calculated in accordance with this Schedule M. Claims made by either Project Co or HMQ for a Gainshare Adjustment or a Painshare Adjustment shall be made at an Annual Review Meeting. If Project Co makes a claim for Painshare Adjustment, Project Co shall within ten (10) Business Days after acceptance of the Energy Analysis Report by HMQ's Representative or within such other period as may be agreed by HMQ's Representative and Project Co, acting reasonably, submit an account to HMQ setting out its calculation and justifying the quantification of the Painshare Adjustment. If HMQ makes a claim for a Gainshare Adjustment, HMQ shall, within ten (10) Business Days after acceptance of the Energy Analysis Report by HMQ's Representative or within

such other period as may be agreed by HMQ's Representative and Project Co, acting reasonably, submit an account to Project Co setting out its calculations and justifying the quantification of the Gainshare Adjustment.

- 4.3** If either Project Co or HMQ wishes to dispute any account presented pursuant to Section 4.2 of this Schedule M, it must do so by notice to the other party within ten (10) Business Days of receipt of such account. If there is no agreement within a further ten (10) Business Days then either party may refer the matter to the Dispute Resolution Procedure. In the absence of any duly-notified dispute (or, if there is such a dispute, following agreement or determination of the disputed account) Project Co shall include the relevant Gainshare Adjustment or Painshare Adjustment as a separate item within the next Monthly Service Payment Invoice prepared by Project Co. No adjustments shall be made to the Service Payment for any claimed Gainshare Adjustment or Painshare Adjustment otherwise than in accordance with the procedure set out in Section 4.2 and this Section 4.3 of this Schedule M.

## **5.0 Content and Format of the Energy Analysis Report**

The Energy Analysis Report shall present findings of Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for the relevant Contract Year and shall include the following:

- 5.1** Summary Analysis – summarized actual usage, degree days, and breakdown by utility in Mega Joules and cubic meters, or other utility rate units. The summary should also highlight any exceptional changes in consumption or pattern of use since any previous survey.
- 5.2** Project Co shall provide accurate and precise consumption data upon delivery of the Energy Analysis Report.
- 5.3** Project Co shall identify potential cost savings in respect of Energy Utilities usage at the Project Facilities and provide an estimate of potential Energy Service consumption savings broken down by fuel type, implementation costs, Simple Payback periods and projected savings along with identifying potential risks associated with each proposed cost savings measure. Project Co shall categorize these cost savings measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures. Project Co shall also advise HMQ of projected Energy Utilities usage at the Project Facilities for the next five (5) years and cost projections in respect of such projected Energy Utilities usage along with pricing trends and potential risks associated with each.
- 5.4** The objectives of the Energy Analysis Report is to confirm Aggregate Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Project Facilities in the relevant Contract Year and to provide data to calculate Corrected Aggregate Energy Consumption, Corrected Discrete Energy Consumption for each individual Energy Service and

Gainshare Adjustment or Painshare Adjustment for each individual Energy Service. The methods of achieving these objectives are by:

- 5.4.1** presentation of Aggregate Actual Consumption, Discrete Energy Service Actual Consumption for each individual Energy Service, and calculation of Corrected Discrete Energy Consumption for each individual Energy Service and the Corrected Aggregate Energy Consumption;
- 5.4.2** presentation of degree day data for the relevant Contract Year;
- 5.4.3** establishment of a basis for continued monitoring of energy and utility consumption and adjustments to the Aggregate Energy Target and/or the Discrete Energy Targets; and
- 5.4.4** utility data collected by Project Co shall be presented in the following table 5.3.5.

Table 5.3.5

	Thirty Year Average for Oshawa	Contract Year	% variance between Average Annual Heating Days/Average Annual Cooling Days and Contract Year
Heating Degree Days	Average Annual Heating Days: ●	Contract Year Heating Days (as provided by Environment Canada): ●	
Cooling Degree Days	Average Annual Cooling Days: ●	Contract Year Cooling Days (as provided by Environment Canada): ●	

Total Energy Summary	Discrete Energy Targets		Actual Consumption		Corrected Discrete Energy Consumption		Percent Variance between vi and ii	Painshare Adjustment or Gainshare Adjustment
	Usage	Cost for Contract Year (calculated based on Discrete Energy Targets multiplied by average unit cost of each discrete Energy Utility)	Usage	Cost for Contract Year	Usage	Corrected Cost for Contract Year (calculated based on Corrected Discrete Energy Consumption for each of the discrete Energy Utilities multiplied by average unit cost of each such discrete Energy Utilities )		
	i	ii	iii	iv	v	vi	vii	viii
Electricity								
Natural Gas								
Oil / Other								
Aggregate sums	[To include Aggregate Energy Target]		[Aggregate Actual Consumption: ●]		[Corrected Aggregate Energy Consumption: ●]			

**5.5** Detailed Analysis of metered end-uses

- (a) Lighting systems and controls
- (b) Constant and variable motor loads
- (c) Variable frequency drive operation
- (d) Chiller efficiency at variable loads
- (e) Cooling load
- (f) Air and water economizer and heat recovery cycles
- (g) Air distribution static pressures and ventilation air volumes
- (h) Boiler efficiencies
- (i) Building related process energy and equipment
- (j) Indoor water risers and outdoor irrigation systems
- (k) Any other metered systems

**5.6** Procedure for determining the Corrected Discrete Energy Consumption for each individual Energy Service will be calculated using the following formula (with separate calculations to be conducted and provided for each discrete Energy Service):

**5.6.1** Corrected Discrete Energy Consumption for the discrete Energy Service for heating energy ("CAECH") = Discrete Energy Service Actual Consumption (Mega Joules) x Average Annual Heating Degree Days / heating degree days published by Environment Canada for the Contract Year.

**5.6.2** Corrected Discrete Energy Consumption for the discrete Energy Service for cooling energy ("CAECC") = Discrete Energy Services Actual Consumption (Mega Joules) x Average Annual Cooling Degree Days / cooling degree days published by Environment Canada for the Contract Year.

**5.7** Outline any outstanding issues from any previous Energy Analysis Report.

**5.8** Adjustments to the Aggregate Energy Target and Discrete Energy Target(s).

**5.9** Table showing the percentage variation in Energy Utilities consumption against the Discrete Energy Target(s) and the Discrete Actual Energy Consumption for each discrete Energy Service.

- 5.10 Tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy Utilities for the previous twelve (12) months. Breakdown of Energy Utilities types and costs for each energy use described in Section 5.4 of this Schedule M and any other major energy use for the previous twelve (12) months.
- 5.11 Appendices - The appendices shall include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report.
- 5.12 Summary tables from all previous Energy Analysis Reports delivered by Project Co to HMQ.
- 5.13 Project Co shall, and it agrees that it will participate in the BOMA Go Green Plus Program. As part of the BOMA Go Green Plus Program implementation, Project Co will be required to conduct an energy audit and a water audit every three (3) years (or at such other time as may be required by the BOMA Go Green Plus Program) based on the BOMA Go Green Plus Program requirements. For each year that a BOMA Go Green Plus submission is required to be prepared by Project Co (in accordance with the BOMA Go Green Plus Program requirements), a copy of such submission shall be appended to the Energy Analysis Report.

**6.0 Corrected Discrete Energy Consumption and Process for Amending the Aggregate Energy Target and the Discrete Energy Targets**

- 6.1 Following the acceptance of the Energy Analysis Report by HMQ's Representative, this data will be used to determine the Painshare Adjustments or Gainshare Adjustments.
- 6.2 For each Contract Year the Corrected Discrete Energy Consumption for each Energy Service shall be compared to the Discrete Energy Target for each Energy Service, and:
  - 6.2.1 if the Corrected Discrete Energy Consumption in respect of any discrete Energy Service is greater than [REDACTED]% of the Discrete Energy Target in respect of such Energy Service then Project Co shall calculate the Painshare Adjustment and credit HMQ's Monthly Service Payments accordingly in accordance with Schedule F (**Payment Mechanism**); or
  - 6.2.2 if the Corrected Discrete Energy Consumption in respect of a discrete Energy Service is less than [REDACTED]% of the Discrete Energy Target in respect of such Energy Service then Project Co shall calculate the Gainshare Adjustment;
- 6.3 At any time commencing after the first anniversary of the Completion Date, Project Co and HMQ shall, acting reasonably, agree to make any adjustments to

the Aggregate Energy Target and the Discrete Energy Target(s) only in the event of:

- 6.3.1** substantial climate change for the relevant time period as reported by Environment Canada compared to the 1976 to 2006 thirty (30) year average meteorological data for Oshawa, Ontario as reported by Environment Canada. Climate change can only be evidenced by a climatic authority such as Environment Canada and must be presented to HMQ with documented evidence of increased consumption trends in similar facilities in the Southern Ontario;
  - 6.3.2** Changes implemented in accordance with the Agreement that would cause load changes or other Changes in Energy Utilities usage;
  - 6.3.3** changes in the utilization of the Project Facilities from that generally described in the Agreement;
- 6.4** Pursuant to Section 6.3, Project Co may elect to propose a correction to the Aggregate Energy Target and the Discrete Energy Targets in direct proportion to any substantial change in occupation hours.
- 6.5** The party requesting an amendment to the Aggregate Energy Target and the Discrete Energy Target(s) shall appoint, subject to the other party's approval (acting reasonably) and pay for a complete energy audit including a detailed computer simulation of Energy Utilities use by function and a comprehensive evaluation of Energy Utilities use patterns and shall author a report making a recommendation to amend the Aggregate Energy Target and Discrete Energy Target(s). Both HMQ and Project Co must agree to the amended Aggregate Energy Target and Discrete Energy Target(s) within twenty (20) Business Days of receipt of such report. If there is no agreement within a further ten (10) Business Day period, then either party may refer the matter to Dispute Resolution Procedure.
- 6.6** Any amendment to the Aggregate Energy Target and the Discrete Energy Target(s) shall only effect the Monthly Service Payment (as a result of resulting Painshare Adjustments or Gainshare Adjustments) from the date in which the amendment is effective and shall not, for greater certainty, have a retrospective affect on Service Payments.

**SCHEDULE M**

**PART III**

**CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT**

The table below shows the banding mechanism used for calculating the Painshare Adjustment or the Gainshare Adjustment to Project Co and HMQ for each Energy Service.

<b>Variance from DET in Year "x"</b>	<b>Project Co's Pain</b>
<b>[REDACTED] - [REDACTED]%</b>	<b>[REDACTED]%</b>
<b>&gt;[REDACTED]%</b>	<b>[REDACTED]%</b>

<b>Variance from DET in Year "x"</b>	<b>Project Co's Gain</b>
<b>[REDACTED] - [REDACTED]%</b>	<b>[REDACTED]%</b>
<b>[REDACTED] - [REDACTED]%</b>	<b>[REDACTED]%</b>
<b>&gt;[REDACTED] - [REDACTED]%</b>	<b>[REDACTED]%</b>

The formulae set out in this part of Schedule M are those referred to in this Schedule and are based on the table above. Their effect is to calculate the Gainshare Adjustment and Painshare Adjustment. For the avoidance of doubt, if Corrected Discrete Energy Consumption in respect of a discrete Energy Utility falls within a set band above or below the relevant Discrete Energy Utility Target (i.e.: no more than [REDACTED]% above or below the benchmark) no Gainshare Adjustment or Painshare Adjustment will be made for that Energy Utility in that year.

1. For the purposes of paragraph 2 of this part of Schedule M:

A = the Corrected Discrete Energy Consumption during the relevant year for a particular Energy Service in units e.g. Mega Joules; m<sup>3</sup>, etc.

B = the Discrete Energy Target for the relevant year for a discrete Energy Service in units e.g. Mega Joules; m<sup>3</sup>, etc.

2. In respect of every year following the Completion Date:

**[REDACTED]**



## SCHEDULE N

### REVIEW PROCEDURE

#### 1. GENERAL

1.1 The following provisions shall apply whenever any document, course of action or matter is required, pursuant to the Agreement, to be reviewed by HMQ in accordance with this Schedule N. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agreement. The following terms have the following meanings:

- (a) “**Commissioning Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (b) “**Completion Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (c) “**Construction Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (d) “**Construction Documents Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (e) “**Construction Work**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (f) “**Design and Construction Submissions**” means the Minimum Design and Construction Submissions and any other Submission reasonably requested by HMQ from time to time relating to compliance with the HMQ Design Requirements and Project Co’s Proposal Extracts (other than any Schematic Design Submissions).
- (g) “**Design Development**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.

- (h) “**Design Development Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (i) “**Energy Target Letter**” has the meaning ascribed to it in Part II of Appendix B of this Schedule.
- (j) “**Minimum Design and Construction Submissions**” means the list of required Submissions set forth in Appendix A of this Schedule N (other than (i) Project Co Notices of Change related drawings, specifications and cost estimates identified in item (iii) of Part III (Minimum Submissions Required for Review in the Construction Stage) of Appendix A of this Schedule N; (ii) the draft Project Co Commissioning Program identified under Part IV (Minimum Submissions for Review in the Commissioning Stage) of Appendix A of this Schedule N; (iii) the draft Occupancy Plan identified in item (i) of Part V (Minimum Submissions for Review in the Occupancy Stage) of Appendix A of this Schedule N; and (iv) the draft Completion Plan identified in item (i) of Part VI (Minimum Submissions for Review in the Completion State) of Appendix A of this Schedule N)) and any other Submissions reasonably requested by HMQ, MAG, MAG Occupants, Non-MAG Occupants and/or the Design and Construction Compliance Consultant at the start-up meeting referenced in paragraph 5.1.1 of this Schedule N relating to design, development, construction, commissioning, occupancy and certification of Completion.
- (k) “**Minimum Schematic Design Submissions**” means the list of required Schematic Design Submissions set forth in Appendix B of this Schedule N.
- (l) “**Occupancy Plan**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (m) “**Occupancy Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (n) “**Response**” means any form of communication from HMQ to Project Co in response to a Submission which is required, pursuant to the terms of the Agreement, to be reviewed by HMQ in accordance with the procedures set forth in this Schedule N, and may be made using any contractually accepted media agreed upon by HMQ and Project Co including e mail, facsimile, letter, mechanically produced or handwritten comments on an electronic or hard copy of the Submission, or minuted verbal comments from a meeting.
- (o) “**Review**” means HMQ’s consideration of Submissions, and which shall result in a Response in any of the following ways:

- (i) a formal response that provides an acceptance, rejection, direction, selection from choices, acknowledgment, or constructive criticism to Project Co;
  - (ii) a formal response that acknowledges receipt but provides no comments;
  - (iii) a formal response that acknowledges receipt and states that the Submission has been “considered”, “considered with comments”, “additional information required” or “time extension required”; or
  - (iv) receipt of the Submission for information purposes only, where no Response is sought or given.
- (p) “**RFP-2 Proposals**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (q) “**Schematic Design Stage**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (r) “**Schematic Design Submissions**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.
- (s) “**Submission**” means any information provided in writing by Project Co to HMQ, including revisions, new versions, re-submissions, or amendments, which, pursuant to the Agreement, are required to be reviewed in accordance with this Schedule N (including, for certainty, the Design and Construction Submissions) and that may be made in the form of reports, drawings, diagrams, product samples, demonstrations, and/or electronic postings to the e Room, but does not include routine correspondence and exchange of information of day-to-day operational nature including any reporting that Project Co makes to other Governmental Authorities.
- (t) “**Urgent Matters**” has the meaning ascribed to it in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement.

- 1.2 Subject to any express provision of the Agreement, the manner, form and timing of any Submission to be made by Project Co to HMQ for review under this Review Procedure shall be determined by Project Co in its discretion.
- 1.3 Submissions for Review in accordance with this procedure may take one of the following forms:
- (a) Submissions made during the Schematic Design Stage, the Design Development Stage, the Construction Documents Stage, the Construction Stage, the Commissioning Stage, the Completion Stage and the Occupancy Stage of the Project Works that occur in a sequential and cumulative manner. These may include, but are not limited to, Submissions related to schematic design development, design development, construction documents, construction schedules, proposed product substitutions, Project Co Notices of Change, testing and inspection schedules, shop drawings and related schedules, mock up and sample schedules, deficiency schedules and any other schedules, plans and reports that may be required for HMQ to understand Project Co's development plans and to solicit HMQ comments;
  - (b) Submissions made in respect of the Service Period Works that occur in a planned sequence specific to the Service Period Works and which are specifically required pursuant to **Schedule E, Part I (Facilities Management Specifications)** of the Agreement to be reviewed pursuant to this Schedule N.
  - (c) Submissions made during the Agreement Term that are intended to be singular Submissions to solicit HMQ comments on Project Co's intended process, procedures and/or plans, which for clarity will include but are not limited to the Project Co Commissioning Program, draft Completion Plan, Service Period Communications Plan, review of Record Drawings, Handback Requirements, the Operational Protocol, Project Co Notices of Change and Submissions required to be submitted to HMQ by Project Co pursuant to Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement (including, for certainty, Submissions required to be made in respect of Urgent Matters and other unscheduled Submissions), and documents and/or plans or programs required to be submitted to HMQ by Project Co for review pursuant to this Schedule N pursuant to **Schedule E, Part I (Facilities Management Specifications)**.
- 1.4 Where a dispute arises between the parties to the Agreement with respect to the procedures set forth in this Schedule N, except where such matter is stated herein to be resolved by the Independent Certifier or PMOC, the Dispute Resolution Procedure shall apply. Any decision of the Independent Certifier pursuant to this Schedule N which is disputed by either Project Co or HMQ, may be referred for resolution pursuant to the Dispute Resolution Procedure, only if the parties are not restricted from doing so pursuant to the Agreement. Any dispute between Project Co and HMQ which may be referred to the Independent Certifier pursuant to this Schedule N prior to Completion shall be referred by the parties to the Independent Certifier pursuant to Section 4.10 of the

Agreement. The parties shall comply with the determination of the Independent Certifier in accordance with Sections 4.10(b) and (c) of the Agreement.

## **2. FORM AND CONTENT OF SUBMISSIONS FROM PROJECT CO**

### **2.1 Each Submission shall include:**

- (a) a transmittal letter signed by Project Co's Representative, identifying;
  - (i) the individual or individuals who prepared the Submission and the appropriate Project Co contact for the Response;
  - (ii) a statement that Project Co believes the Submission is in full compliance with all relevant Project Documents commensurate with the intended level of completion at the time of the Submission;
  - (iii) a statement confirming that all relevant members of the Project Co Project team are satisfied that the Submission includes all of their comments and requirements;
  - (iv) Submission history showing a register number of the Submission and all previous versions of the Submission, identifying any previous version superseded by the current Submission;
  - (v) a statement of the proposed course of action to be reviewed and a description of the proposed matter to be reviewed;
  - (vi) a statement of how the proposed course of action or the proposed matter has changed from any previous matter reviewed by HMQ; and
  - (vii) where applicable, an inventory of the separate parts of the entire Submission;
- (b) a copy of the proposed document to be reviewed, wherein the parts of the Submission that are subject to Review are identified through electronic layering, highlighting, blacklining, or other easily recognized means;
- (c) a statement of the relationship between the proposed document, the proposed course of action or the proposed matter and the design, construction or management of the Project and any proposed Variations or Changes incorporated in the document, if applicable;
- (d) where applicable to the Submission, the specific reference to applicable provisions of the Agreement; and
- (e) backup material, including as applicable, product samples, technical information, material data sheets or information reasonably necessary to understand the proposed document, the proposed course of action or the proposed matter and its relationship to the Project.

2.2 In addition to the requirements set forth in 2.1 above, each Schematic Design Submission shall include one (1) hard copy of such Schematic Design Submission, only in circumstances where presentation format documents are requested by HMQ. All other Schematic Design Submissions shall be submitted to HMQ on CDROM and four copies of same shall be submitted to HMQ and simultaneously posted in the eRoom. All Schematic Design Submissions shall be formatted by the Proponent as Adobe Acrobat Portable Drawing Format (pdf), including all drawings in "full size" pdf, printable at actual size.

### 3. FORM OF RESPONSE FROM HMQ

3.1 (a) Except as set forth below, each Response from HMQ shall include a transmittal letter signed by the HMQ Representative or an authorized designee identifying:

- (i) the numerical register number of the Submission;
- (ii) the intended Project Co recipient for the Response;
- (iii) the individual or individuals who prepared the Response and an appropriate HMQ contact for informal clarification;
- (iv) in the case of a Response to Submissions other than Design and Construction Submissions, an endorsement that states "no comment", "comments included", "additional information required", "time extension required", "rejected", "not accepted, do not proceed but resubmit" or any other response contemplated by item (i) of the definition of "Review" hereof;
- (v) in the case of a Response in relation to any Design and Construction Submissions, an endorsement that states "no comment", "considered", "considered with comments", "additional information required" or "time extension required";
- (vi) where necessary, and other than in respect of any endorsement that states "considered" or "no comment" in respect of Design and Construction Submissions, one (1) marked up copy of Project Co's Submission to explain the endorsement; and
- (vii) where the Response is endorsed "comments included" or "rejected" or in the case of a Response to a Design and Construction Submission endorsed "considered with comments", HMQ shall provide details to explain the ground(s) upon which such comments are based (as such grounds are generally described in Section 8.0 of this Schedule N) and attach any information or evidence in its possession that HMQ considers relevant.

(b) The comment "rejected" will be assigned to those Submissions (other than, for certainty, Design and Construction Submissions) that, in the opinion of the HMQ Representative, acting reasonably, contain significant deficiencies in respect of or

do not generally conform with the requirements of the Agreement, including this Schedule N.

- 3.2 Unless otherwise stated in this Schedule N, a Response shall be provided to Project Co within (i) fifteen (15) Business Days of receipt of the Submission (other than a Design and Construction Submission); (ii) ten (10) Business Days of receipt of a Design Construction Submission (other than a Schematic Design Submission), and (iii) five (5) Business Days of receipt of a Schematic Design Submission, in each case, in accordance with paragraphs 3.1(a)(i) to (vii), as applicable, and in all cases the Response shall be provided by HMQ as soon as reasonably practicable, subject to the following provisions:
- (a) where for reasons of Submission complexity or volume of concurrent Submissions or other reasons which may unduly burden HMQ resources, at the HMQ Representative's discretion, HMQ may, as soon as practicable, request a time extension (i) beyond fifteen (15) Business Days in respect of Submissions other than Design and Construction Submissions; (ii) beyond ten (10) Business Days in respect of Design and Construction Submissions, or (iii) beyond five (5) Business Days in respect of Schematic Design Submissions, in each case, for such period of time that HMQ reasonably needs, or other suitable strategy to accommodate the Review of a Submission, which extension shall be agreed to by HMQ and Project Co, each acting reasonably. Where HMQ and Project Co are unable to reach agreement on HMQ's request for additional time, the issue shall be referred (a) to the Independent Certifier for determination if the Submission relates to or is in connection with Project Works and the Independent Certifier shall make such determination and render a decision within five (5) Business Days of the day the matter is referred to it; or (b) if the Submission relates to or is in connection with any Service Period Works, to the PMOC for consideration, and if the PMOC is unable to reach an agreement in respect of such matter, the issue may be resolved in accordance with the Dispute Resolution Procedure;
  - (b) if HMQ, acting reasonably, considers that the Submission does not contain sufficient information to enable it to conduct a proper Review, it may, having regard to its statutory duties, request in writing that Project Co submit all such further reasonably necessary additional details to enable it to conduct a proper Review. Project Co shall thereafter provide any further reasonably requested information within five (5) Business Days after the request has been made by HMQ;
  - (c) if HMQ has requested further information in accordance with paragraph 3.2(b), it shall, within ten (10) Business Days of receiving the information, provide the Response to Project Co endorsed in accordance with paragraphs 3.1(a)(iv) or 3.1(a)(v), as applicable;
  - (d) in the event HMQ returns a Submission to Project Co endorsed "rejected", "comments included" or "considered with comments", "not accepted", "do not proceed but re-submit" (or text similar to any of the foregoing), Project Co shall correct and re-submit such Submission to HMQ within twenty (20) Business Days after the comment has been provided to Project Co, or such longer period as may

be agreed to by HMQ given the complexity of the Submission and (unless the Submission is re-submitted within five (5) Business Days) shall give the HMQ Representative not less than five (5) Business Days' notice of when such Submission shall be resubmitted. The HMQ Representative will then review such re-submitted Submissions within twenty (20) Business Days of receipt of the re-submitted Submission unless HMQ requests a time extension beyond the twenty (20) Business Day period, which, in consideration of any material delay to the completion of the Project Facilities, shall not be unreasonably withheld, and assign a comment to be the corrected Submission endorsed in accordance with paragraphs 3.1(a)(iv) or 3.1(a)(v), as applicable. The Submissions (other than the Design and Construction Submissions) shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the HMQ Representative, Project Co shall not proceed with any Project Operations to which such Submissions (other than, for certainty, the Design and Construction Submissions) receiving the comment "rejected", "not accepted", "do not proceed but re-submit", "comments included" or "considered with comments" (or text similar to the foregoing) relate until Project Co obtains a comment that permits Project Co to proceed.

- (e) except as set forth herein, in the event HMQ fails to provide a Response within (i) fifteen (15) Business Days of the date of receipt of a Submission (other than Design and Construction Submissions); (ii) ten (10) Business Days of the date of receipt of a Design and Construction Submission; (iii) five (5) Business Days of the date of receipt of a Schematic Design Submission; (iv) ten (10) Business Days of the date of receipt of any necessary additional information in accordance with paragraph 3.2(c) of this Schedule N, or (v) twenty (20) Business Days (unless such time period is extended) of the date of receipt a re-submitted Submission delivered in accordance with paragraph 3.2(d) of this Schedule N, then, in each case, HMQ shall be deemed to have provided a Response endorsed "no comment";
- (f) in the event HMQ returns a Submission to Project Co endorsed "no comment" or HMQ is deemed to have provided a response "no comment" pursuant to paragraph 3.2(d) of this Schedule N, Project Co shall not be relieved of its obligations under the Agreement and shall continue to comply with its obligations under the Agreement.

#### **4. TABLE OF SUBMISSIONS**

- 4.1 Project Co shall prepare a table of proposed Submissions, which table shall be provided to the HMQ Representative no later than fifteen (15) days after the Date of the Agreement, for both the period up to the Planned Completion Date and during the Service Period. The table shall:
  - (a) be prepared in three parts in accordance with paragraphs 1.3(a), (b) and (c) of this Schedule N to plan, track and verify the status of Submissions during the period up to Completion and during the Service Period;



- (b) lay out all Submissions required by the Agreement, Submissions proposed in the RFP-2 Proposals and additional Submissions identified during creation of the Schematic Design prior to the Date of Agreement;
  - (c) include a chronological schedule of intended Submissions and a numerical register to identify Submissions and versions of Submissions; and
  - (d) be updated and posted to the e Room on a monthly basis up until completion of the Project Works and at any other interval determined by PMOC or otherwise required pursuant to the Agreement for the Service Period.
- 4.2 The Schematic Design Submissions referenced in the table shall be delivered in accordance with the schedule of delivery of such Submissions as determined prior to the Date of Agreement and in accordance with the Preferred Proponent Agreement.

**5. REVIEW PROCESS FOR SUBMISSION CATEGORIES OF PARAGRAPHS 1.3 (a), (b) and (c) OF THIS SCHEDULE N**

A. *Submissions during design, construction, commissioning, certification of Completion and occupancy stages that occur in a sequential and cumulative manner.*

5.1.1 Review of Submissions during the Schematic Design Stage, the Design Development Stage, the Construction Documents Stage, the Construction Stage, the Commissioning Stage, the Completion Stage and the Occupancy Stage of the Project Works identified in paragraph 1.3(a) of this Schedule N shall proceed as follows:

- (a) within fifteen (15) days of execution of the Agreement, Project Co will schedule a start up meeting for all stages of the Project Works in accordance with the requirements and procedures set forth in **Part II of Schedule B (Design and Construction Procedure)** of the Agreement wherein, among other things:
  - (i) Project Co will provide the table described in paragraph 4.1 of this Schedule N;
  - (ii) the list of Minimum Design and Construction Submissions and the list of the Minimum Schematic Design Submissions will be reviewed to ensure Project Co fully understands such minimum Submissions;
  - (iii) Project Co, HMQ, MAG and MAG Occupant and Non-MAG Occupant representatives will discuss and agree on the preferred media for all Schematic Design Submissions and Design and Construction Submissions in which Responses shall occur that most reasonably will permit the Project to proceed without delay or interruption; and
  - (iv) Project Co, HMQ, MAG and MAG Occupant and Non-MAG Occupant representatives will discuss and agree on a regime and schedule for consultations, meetings and workshops to be carried out so as to ensure that Project Co may satisfy the design, construction, commissioning and completion and occupancy requirements set forth in the Agreement.

- 5.1.2 HMQ shall review each Design and Construction Submission within the time period set forth in Section 3.2 of this Schedule N and all Design and Construction Submissions shall be otherwise reviewed in accordance with the provisions of paragraph 3.2 of this Schedule N;
  - 5.1.3 Where either Project Co or HMQ are unable to satisfy the intended outcome of the Submission (other than Design and Construction Submissions) or Response process (other than in respect of Design and Construction Submissions), either party may (a) if the Submission relates to or is in connection with the Project Works, refer the matter to the Independent Certifier for determination and the Independent Certifier shall make a determination and render a decision within five (5) Business Days of the day in which the matter is referred to it, or (b) if the Submission relates to or is in connection with any Service Period Works refer the matter to the PMOC for consideration, and if the PMOC is unable to reach an agreement in respect of such matter, the issue may be resolved in accordance with the Dispute Resolution Procedure.
  - 5.1.4. Notwithstanding anything to the contrary set forth herein, Project Co and HMQ acknowledge and agree that the schedule for submitting Schematic Design Submissions agreed to prior to the Date of Agreement in accordance with the Preferred Proponent Agreement shall apply in respect of all Schematic Design Submissions.
- B. *Review of Submissions made in respect of or relating to the Service Period Works that occur in a planned sequence.*
- 5.2.1 Submissions made in respect of or relating to the Service Period Works identified in paragraph 1.3(b) of this Schedule N will include such monitoring, reporting and other matters as are specifically identified in **Part I: Facilities Management Specifications of Schedule E (Service Period Works)** as matters, reports and/or plans which are required to be reviewed pursuant to this Review Procedure.
  - 5.2.2 These Submissions shall be Reviewed in accordance with the provisions of paragraph 3.2.
- C. *“Singular” Submissions during Project Works and/or the Service Period.*
- 5.3.1 Submissions made during Project Works and/or the Service Period that are singular Submissions will include, but are not limited to:
    - (a) any Operational Protocol, Service Period Communications Plan, draft Project Co Commissioning Program, draft Completion Plan and draft Occupancy Plan;
    - (b) proposals for Handback Works and/or the Handback Program; and
    - (c) review of Record Drawings.
  - 5.3.2 These Submissions shall be Reviewed in accordance with the provisions of paragraph 3.2. For certainty, such Submissions do not constitute Design and Construction Submissions.

## **6. PROJECT CO RESPONSE TO COMMENTS**

- 6.1 To the extent that HMQ raises comments in its Response on any Submission, Project Co may:
- (a) request written clarification of the basis for such comments with the reasons why such clarification is necessary; or
  - (b) if clarification in respect of a Submission (other than any Design and Construction Submission) is not received within five (5) Business Days of such request by Project Co, Project Co may (i) if the Submission relates to or is in connection with the Project Works, refer the matter for determination by the Independent Certifier in accordance with the Agreement and the Independent Certifier shall make a determination and render a decision within five (5) Business Days of the day in which the matter is referred to it; or (ii) if the Submission relates to or is in connection with any Service Period Works, Project Co may refer the matter to PMOC for consideration and if the PMOC is unable to reach an agreement in respect of such matter the issue may be resolved in accordance with the Dispute Resolution Procedure;
- 6.2 If clarification is received, Project Co may thereafter amend the Submission, or in the case of Submissions other than Design and Construction Submissions (i) refer the matter for determination by the Independent Certifier in accordance with the Agreement, in the case of Submissions which relate to or are in connection with the Project Works and the Independent Certifier shall make a determination and render a decision within five (5) Business Days of the day in which the matter is referred to it; or (ii) if the Submission relates to or is in connection with any Service Period Works, Project Co may refer the matter to PMOC for consideration and if the PMOC is unable to reach an agreement in respect of such matter the issue may be resolved in accordance with the Dispute Resolution Procedure.
- 6.3 HMQ may at any time advise Project Co that a dispute exists with respect to any Submission (other than Design and Construction Submission) and (i) refer the matter for determination by the Independent Certifier in accordance with the Agreement, in the case of Submissions which relate to or are in connection with the Project Works and the Independent Certifier shall make a determination and render a decision within five (5) Business Days of the day in which the matter is referred to it; or (ii) if the Submission relates to or is in connection with any Service Period Works, Project Co may refer the matter to PMOC for consideration and if the PMOC is unable to reach an agreement in respect of such matter the issue may be resolved in accordance with the Dispute Resolution Procedure.

## **7. ADDITIONAL INFORMATION**

- 7.1 Project Co shall submit any further or other information, data and documents that HMQ reasonably requires pursuant to paragraph 3.2(b) of this Schedule N in order to determine whether HMQ has a basis for raising comments, making objections or rejecting a Submission, requesting additional information or requesting an extension of time in

respect of any Submission in accordance with this Schedule N. If Project Co does not submit any such information, data and documents, HMQ shall be entitled to:

- (a) comment on the Submission on the basis of the information, data and documents which have been provided;
- (b) object to the Submission on the grounds, acting reasonably, that insufficient information, data and documents have been provided to enable HMQ to determine whether it has a legitimate basis for commenting or objecting in accordance with this Schedule; and/or
- (c) in the case of Submissions other than Design and Construction Submissions, (i) immediately refer the matter for determination by the Independent Certifier in accordance with the Agreement, in the case of Submissions which relate to or are in connection with the Project Works, and the Independent Certifier shall make a determination and render a decision within five (5) Business Days of the day in which the matter is referred to it; or (ii) if the Submission relates to or is in connection with any Service Period Works, Project Co may refer the matter to PMOC for consideration and if the PMOC is unable to reach an agreement in respect of such matter the issue may be resolved in accordance with the Dispute Resolution Procedure.

## **8. GROUNDS FOR COMMENTS**

- 8.1 The endorsement “comments included”, “considered with comments” or “rejected” (or words to that effect) shall be construed to mean “raise comments or make objections” unless the contrary appears from the context. Notwithstanding any endorsement by HMQ stating “comments included” or “considered with comments” or “considered” or “rejected” (or words to that effect) Project Co shall not be relieved of its obligations under the Agreement and Project Co shall continue to comply with its obligations under the Agreement as if the relevant Submission had not been proposed. HMQ may raise comments in relation to any Submission on the grounds set out in this Section, including that the Submission would (on the balance of probabilities) breach Applicable Law.
- 8.2 In relation to Schematic Design Submissions, HMQ may raise comments on any one (1) or more of the following grounds:
  - (a) the base building net areas do not accommodate FF&E layouts in a manner that achieves Courthouse Functionality;
  - (b) the FF&E layouts do not achieve the intent of the HMQ Design Requirements;
  - (c) is not in accordance with the requirements of this Agreement;
  - (d) is not in accordance with the HMQ Design Requirements or the HMQ Facilities Management Requirements; and/or
  - (e) it will interfere with the provision of Courthouse Activities or bring the administration of justice into disrepute.

- 8.3 In relation to any drawings and other project data related to design development and construction submitted pursuant to the requirements of the Agreement, including any Project Co Notice of Change, HMQ may raise comments on the grounds that the Submission:
- (a) does not meet the requirements for Courthouse Functionality;
  - (b) is not in accordance with the requirements of the Agreement;
  - (c) is not in accordance with the HMQ Design Requirements or the HMQ Facilities Management Requirement; and/or
  - (d) will interfere with the provision of the Courthouse Activities or bring the administration of justice into disrepute.
- 8.4 In relation to any Operational Protocol, the Service Period Communications Plan the draft Project Co Commissioning Program, the draft Occupancy Plan and the draft Completion Plan, HMQ may raise comments on the grounds that the Submission:
- (a) is inconsistent with HMQ's or any the Project Facilities occupant's statutory duties;
  - (b) is inconsistent with the terms of the Agreement;
  - (c) is inconsistent with the requirements of the Facilities Management Specifications as set out in Part I: Facilities Management Specifications of **Schedule E (Service Period Works)**;
  - (d) is in breach of any Applicable Law; and/or
  - (e) would not or is unlikely to achieve services which meet the HMQ Requirements of the Agreement or would not or is unlikely to generally conform to the requirements and obligations of Project Co under the Agreement.
- 8.5 In relation to the submission of Project Co's proposals for the Handback Works, the Handback Program and the Handback Amount, HMQ may raise comments on any one (1) or more of the following grounds:
- (a) in the case of the Handback Works, Project Co's proposals will not, in HMQ's reasonable opinion, ensure that the Handback Requirements are achieved in accordance with the requirements of the Agreement;
  - (b) in the case of the Handback Program, performance of the Handback Works in accordance with the Handback Program is not, in HMQ's reasonable opinion, capable of achieving satisfaction of the Handback Requirements in accordance with the requirements of the Agreement; and/or
  - (c) in the case of Project Co's proposals for updating the Asset Condition Register, on the grounds that updating the Asset Condition Register in accordance with such proposals would not accurately reflect the condition of the relevant assets.

8.6 In relation to any other Submission which is subject to review pursuant to this Schedule N, HMQ may raise comments on the grounds that the Submission would not or is unlikely generally to conform to the requirements and obligations of Project Co under the Agreement.

## **9. EFFECT OF REVIEW**

9.1 In the event that HMQ returns any Submission or such Submission is deemed to have been returned by HMQ endorsed “no comment”, Project Co shall thereafter proceed to implement in accordance with the Submission.

9.2 In the event that HMQ returns the Submission to Project Co endorsed “comments included” or “considered with comments” (in the case of Design and Construction Submissions only), Project Co shall comply with such Submission as may be amended in accordance with the relevant comments or, in the case of an objection to or rejection of the relevant Submission shall continue to comply with its obligations under the Agreement as if the relevant Submission (or such part of it as has been objected to by HMQ) had not been proposed and re-submit such Submission in accordance with Section 3.2(d) of this Schedule N. Notwithstanding the foregoing, if Project Co disputes that any such comment or objection to a Submission (other than a Design and Construction Submission) is not based upon grounds permitted or contemplated by the Agreement or this Schedule N, Project Co or HMQ may (i) refer the matter to the Independent Certifier for determination in accordance with the Agreement in the case of Submissions which relate to or are in connection with the Project Works and the Independent Certifier shall make a determination and render a decision within five (5) Business Days of the day in which the matter is referred to it; or (ii) if the Submission relates to or is in connection with any Service Period Works, Project Co may refer the matter to PMOC for consideration and if the PMOC is unable to reach an agreement in respect of such matter, the issue may be resolved in accordance with the Dispute Resolution Procedure and Project Co shall not act on the Submission until such matter is so determined. In the event that HMQ returns a Submission to Project Co endorsed “comments included”, “considered with comments” or “considered” (in the case of Design and Construction Submissions only), the parties shall continue to comply with their respective obligations under the Agreement, and enjoy their respective rights under the Agreement as if the relevant Submission (or such part of it as is in dispute) had not been proposed.

9.3 The Response to any Submission endorsed “no comment” or “considered” (in the case of Design and Construction Submissions only) or any Submission deemed to be endorsed “no comment” as per 3.2(f), shall mean that the relevant Submission may be used or implemented for the purposes for which it is intended but such Response shall not otherwise relieve Project Co of its obligations under the Agreement nor is it an acknowledgement by HMQ that Project Co has complied with any or all of such obligations. Where HMQ has endorsed the Submission “comments included” or, in the case of Design and Construction Submissions only, “considered with comments”.

(a) and the comments state that the Submission is “accepted other than amendment(s) as noted” (or words to that effect) or in the case of Design and Construction Submissions only, “considered with comment(s)” (or words to that effect), Project

Co may either proceed to construct, or proceed to the next level of design of the part of the Project Facilities to which the Submission relates and incorporate any amendments or comments to HMQ's satisfaction or otherwise proceed with the plan, proceeding or matter which was the subject matter of the Submission; or

- (b) and the comments state "not accepted, do not proceed but resubmit" (in the case of Submissions other than Design and Construction Submissions), Project Co shall not act upon the Submission, but instead amend the Submission to HMQ's satisfaction and re-submit the same to HMQ.

## **10. DOCUMENTATION MANAGEMENT**

- 10.1 Project Co shall post all Submissions to the e Room, and shall immediately notify HMQ's Representative of the posting in writing, which date shall be the recorded notification date from which the prescribed Review period shall be begin.
- 10.2 HMQ shall, to the extent practicable, print the copies it requires from the e Room for its Review at HMQ's own cost. Where the only practical method to submit the Submission to HMQ is in hard copy, Project Co shall issue five (5) copies of all Submissions to HMQ and the date of receipt by HMQ shall be the recorded notification date.
- 10.3 Project Co shall compile and maintain a register of the date and contents of all Submissions, a copy of which shall be provided monthly to HMQ.
- 10.4 Project Co shall compile and maintain a register of the date of receipt and content of all Submissions that are returned or deemed to be returned by HMQ.
- 10.5 All Submissions, including the table of Submissions and register of Submissions, shall be posted to the e Room in a timely manner and shall be maintained in current form.

## **11. NO CHANGES**

- 11.1 No Review, comment or endorsement or any failure to give, carry out or make any Review, comment or endorsement pursuant to this Schedule N shall constitute a Change. No alteration or modification to the design, quality and quantity of the Project Works arising from the development of detailed design or from the co-ordination of the design or from any amendments proposed by HMQ in its Review shall be construed or regarded as a Change.

**APPENDIX A**  
**MINIMUM SUBMISSIONS REQUIRED FOR REVIEW RELATING TO DESIGN,  
CONSTRUCTION, COMMISSIONING, COMPLETION AND OCCUPANCY OF THE  
PROJECT FACILITIES**

**Part I Minimum Submissions Required for Review in Design Development Stage**

Project Co shall provide the following Submissions to HMQ for review and comments in accordance with this Schedule N, and as may be amended by mutual agreement of Project Co, HMQ and MAG in the start-up meeting described in Section 5.1.1(a) of this Schedule N:

- (a) Design development documents selected generally in accordance with the requirements set forth in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement including:
  - (i) Architectural, structural, mechanical and electrical floor plans including emergency generator layout and distribution system;
  - (ii) Floor layouts illustrating all structural elements, partitions, interior doors, glazing updated millwork and FF&E, including power, voice and data outlets and courtroom audio visual equipment locations, power outlets required for equipment supplied by MAG, and other cabled systems;
  - (iii) Building sections and elevations;
  - (iv) Reflected ceiling plans for public entrances, all public spaces at ground and second floors of the courthouse building, public corridors, courtroom waiting areas, all courtrooms, motion rooms, conference/settlement rooms and the jury assembly room;
  - (v) Structural details;
  - (vi) Exterior wall sections and cladding details;
  - (vii) Final elevator and escalator details;
  - (viii) Site plan, site services and details;
  - (ix) Landscaping plans and details;
  - (x) Building science report reviewing envelope design and details;
  - (xi) Revised table of contents for specifications, showing new sections, and an update of specification changes and substitutions with relevant back up information and samples.



- (xii) Interior elevations of courtrooms and all public spaces;
- (xiii) Interior finishes colour and materials selection boards which includes a minimum of three (3) complete options for interior finishes in accordance with Section 3.2(i)(f) of Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)**;
- (xiv) Millwork plans, elevations and details;
- (xv) Finalized door and hardware schedules;
- (xvi) Lighting design report including analysis of illumination, reflectances, room cavity ratios, plane heights;
- (xvii) Finalized lighting fixture schedules;
- (xviii) Floor plans showing security systems layouts, locations of all security systems equipment, connection points and control points;
- (xix) Security equipment details;
- (xx) Mock up design package in accordance with the HMQ Design Requirements;
- (xxi) Schematic drawings of all millwork elements shown in Space Layouts (as named in Schedule B, Part I, Volume I of the Agreement including those in every courtroom, public counters, public waiting, judicial areas, library shelving, open of the areas, prisoner handling, lunch rooms, kitchens, etc. that show all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale) as appropriate;
- (xxii) Complete site details (1:100) and other scales as appropriate;
- (xxiii) Single line audio/visual distribution diagrams showing cable management and a/v equipment rooms;
- (xxiv) FF&E layout drawings as described in Section 3.4(i)(b)(B)(II) of the Design and Construction Procedure;
- (xxv) Detailed lighting design submittals, including fixture cut sheets and illumination level analysis;
- (xxvi) Preliminary door and hardware schedules and hardware cut sheets;
- (xxvii) ODA compliance report;
- (xxviii) Building vibration analysis; and

- (xxix) Updated building acoustical design report.
- (b) Product information and samples of equipment from (a) Division E, Performance Specifications of the HMQ Design Requirements; and (b) Section 12.6 of the HMQ Facilities Management Requirements;
- (c) Updated construction quality control plan;
- (d) Comprehensive acoustical report reviewing all acoustical conditions;
- (e) Acoustical details implementing recommendations of acoustical report;
- (f) Pedestrian level wind study to demonstrate that the development will not create unacceptable wind and snow accumulation conditions at building entrances, exits, courthouse plaza, landscaped open spaces and street sidewalks; and
- (g) LEED registration with CaGBC and LEED credits tracking documentation.

## **Part II Minimum Submissions Required for Review in the Construction Documents Stage**

Project Co shall provide the following Submissions in respect of the Construction Documentation Stage to HMQ for review and comment in accordance with this Schedule N, as may be amended by mutual agreement by HMQ, MAG and Project Co in the start-up meeting described in Section 5.1.1(a) of this Schedule N:

- (a) Construction documents selected generally in accordance with Section 4.0 of Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement including:
  - (i) Architectural structural, mechanical and electrical floor plans;
  - (ii) Floor layouts showing locations of all security systems equipment, connection points and control points;
  - (iii) Floor layouts showing partitions, millwork and FF&E, including power, voice and data outlets, and courtroom audio visual equipment locations, power outlets required for equipment supplied by MAG, and other cabled systems;
  - (iv) Building sections and elevations;
  - (v) Reflected ceiling plans for public entrances, all public spaces at ground and second floors of the courthouse building, public corridors, public waiting areas, all courtrooms, motion rooms, conference/settlement rooms and the jury assembly room;
  - (vi) Structural details;

- (vii) Exterior wall sections and cladding details;
  - (viii) Elevator and escalator plans, sections and details;
  - (ix) Site plan, site services and details;
  - (x) Landscaping plans and details;
  - (xi) Updated specifications and proposed substitutes.
  - (xii) Interior elevations of courtrooms and all public spaces;
  - (xiii) Interior finish schedules;
  - (xiv) Millwork plans, elevations, sections and details;
  - (xv) Door and hardware schedules;
  - (xvi) Lighting fixture schedules;
  - (xvii) Security systems plans and details;
  - (xviii) Security equipment plans and details;
  - (xix) Acoustical treatment plans and details;
- (b) Specifications of equipment selected by HMQ from product information and samples of equipment from (a) Division E, Performance Specifications of the HMQ Design Requirements; and (b) Section 12.6 of the HMQ Facilities Management Requirements;
  - (c) Report on review and adjustments mock-ups; and
  - (d) Progress report on LEED credit tracking documentation.

### **Part III Minimum Submissions Required for Review in the Construction Stage**

Project Co shall provide the following Submissions in respect of the Construction Stage to HMQ for its review in accordance with this Schedule N, as may be amended by mutual agreement by HMQ, MAG and Project Co and HMQ at the start-up meeting described in Section 5.1.1(a) of this Schedule:

- (i) shop drawings, test reports, and inspection reports;
- (ii) Project Co proposed substitutions;
- (iii) Project Co Notices of Change, related drawings, specifications, and cost estimates;
- (iv) deficiency reports; and

- (v) any other Submissions HMQ reasonably requires to understand and accept the Project Works.

#### **Part IV Minimum Submissions for Review in the Commissioning Stage**

Project Co shall provide to HMQ for its review, the draft Project Co Commissioning Program in accordance with the Agreement and any other Commissioning Submissions (as that term is defined in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement) required to be delivered pursuant to the Agreement.

#### **Part V Minimum Submissions for Review in the Occupancy Stage**

Project Co shall provide the following Submissions in respect of the Occupancy Stage to HMQ for its review in accordance with this Schedule N:

- (i) A draft Occupancy Plan not less than two hundred and seventy (270) days before the Planned Completion Date;
- (ii) Project Co shall provide HMQ with any other submissions HMQ reasonably requires in order to understand the Occupancy Work (as such term is defined in Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of **Schedule B (Project Works)** of the Agreement).

#### **Part VI Minimum Submissions for Review in the Completion Stage**

Project Co shall provide the following Submissions in respect of the Completion Stage to HMQ for its review in accordance with this Schedule N:

- (i) A draft Completion Plan not less than one hundred and fifty (150) days prior to the Planned Completion Date; and
- (ii) Any Project Works documents required to determine Completion.

## **APPENDIX B**

### **MINIMUM SCHEMATIC DESIGN SUBMISSIONS**

#### Part I – Schematic Design Submissions

Project Co shall provide the following Schematic Design Submissions to HMQ for review and comment in accordance with Schedule N (Review Procedure) of the Agreement and in accordance with the two step review process set forth in Section 3.4(iii) of Schedule B, Part II: Design and Construction Procedure: Design Development Stage, Construction Documents Stage, Construction Stage, Completion Stage, Occupancy Stage and Commissioning Stage of the Agreement, and as may be amended by mutual agreement of Project Co and HMQ at the Start-Up Meeting:

- (a) Each individual component set forth in Part II (Final Schematic Design Submission) of this Appendix (each such individual component to be considered is an individual Schematic Design Submission);
- (b) Schematic Design documents selected generally in accordance with 3.0 of the Design and Construction Procedure including:
  - (i) structural, mechanical, electrical, civil, security and other systems;
  - (ii) FF&E layouts for MAG Occupants and Non-MAG Occupants, showing all required FF&E items resolved in sufficient detail to ensure that:
    - (A) base building net areas can accommodate FF&E layouts in a manner that achieves Courthouse Functionality;
    - (B) the FF&E layouts will achieve the intent of the HMQ Design Requirements, particularly in respect of layout clarity, appropriate adjacencies, efficient primary and secondary circulation systems within enclosed areas and efficient uses of space; and

#### Part II – Final Schematic Design Submission

Project Co shall provide the Final Schematic Design Submission for review and acceptance by HMQ and the Design and Construction Compliance Consultant in accordance with **Schedule N (Review Procedure)** of the Agreement which Final Schematic Design Submission shall be delivered to HMQ no later than five (5) Business Days prior to the Schematic Design Acceptance Date and shall include the following components:

- (a) Design drawings submitted by Project Co pursuant to the Preferred Proponent Agreement, which shall be modified to schematic design drawings, correcting any items of non-compliance with the HMQ Design Requirements as identified by OIPC or MAG throughout the Schematic Design Submissions process in accordance with the Agreement. This drawing submittal shall include:

- (i) Site plan (1:500 scale);
  - (ii) Floor plans at each level including basement (1:100 scale);
  - (iii) Roof plans (1:200 scale);
  - (iv) Reflected ceiling plans (1:100 scale) of major spaces;
  - (v) Sections (1:100 scale);
  - (vi) Elevations (1:100 scale);
  - (vii) Two perspectives (Bond and New Streets) (610x 915mm) in colour; and
  - (viii) Three interior perspectives.
- (b) Written description and design summary for each building element described in the HMQ Design Requirements. The description shall confirm elements described in the RFP-2 Proposal and in the Interim Schematic Design, and describe adjustments or provide added detail for the elements.
- (c)
- (i) A report confirming that the proposed building energy cost can be achieved using hourly energy simulation software in accordance with the modeling procedures discussed in the LEED Canada version 1.0 Reference Manual.
  - (ii) A letter confirming Project Co's commitment (subject to the provisos in Section 2.18(b) of the Project Agreement) to Aggregate Energy Target and Discrete Energy Targets at levels equal to or below those stated in Project Co's RFP-2 Proposal accompanied by an Energy Benchmark Table in the form of the Energy Benchmark Table provided in Appendix C of this Schedule:
    - (A) describing the discrete energy targets that sum total of which is equal to the Energy Target; and
    - (B) detailed information with respect to the assumptions used by Project Co to determine the Aggregate Energy Target.
- (d) New schematic design drawings as follows:
- (i) Preliminary exterior wall sections (1:50 scale) and other scales as appropriate for entrance lobby, typical courtroom floor at waiting area and public corridor, and typical at line of judicial chambers.
  - (ii) Site architectural landscape plan (1:500 scale) with details as appropriate;

- (iii) Site plan showing mechanical, electrical, civil engineering and utility systems (1:500 scale);
  - (iv) Structural plans showing all vertical structural elements at each level (1:100 scale);
  - (v) Single line site services layouts for site electrical supplies and systems, potable water, storm water, sanitary drains, and utilities, including street connections;
  - (vi) Single line schematic diagram for plumbing systems including but not limited to sanitary drainage, storm drainage, domestic hot and cold water distribution;
  - (vii) Single line schematic diagram for HVAC systems, including but not limited to heating water or glycol distribution, steam distribution, chilled water or glycol distribution and air distribution;
  - (viii) Single line schematic diagram of systems and distribution for fire suppression systems including but not limited to sprinklers, standpipes, special fire suppression systems;
  - (ix) Single line schematic diagram of building controls including but not limited to system architecture and zoning;
  - (x) Single line diagram of fire alarm systems including zoning scheme;
  - (xi) Single line schematic diagrams for integrated security systems, including but not limited to building exterior, building entrances, holding area video surveillance, video surveillance of all other areas, door control systems, duress and parking alarm system, and intercom system;
  - (xii) Single line schematic diagram for public address system, master clock system;
  - (xiii) Single line diagrams of structured cabling system showing vertical and horizontal distribution schemes, telecom point-of-entry, riser rooms, telephone equipment rooms, ancillary rooms;
  - (xiv) Single line electrical power and lighting distribution diagram showing point-of- entry, transformers, switchboards, distribution panels, and surge protection;
  - (xv) Single line diagram of emergency power distribution scheme, including generator(s), switchgear, cabling and fuel storage and supply system; and
- (e) Other Submittals including:
- (i) Updated vertical transportation analysis;

- (ii) Updated preliminary finish schedule;
- (iii) Updated Code analysis and compliance strategy;
- (iv) Updated confirmation of compliance with net building areas; and
- (v) Updated specifications showing modifications from Project Co's RFP-2 Proposals, new specifications for Submissions added during the Schematic Design Stage, and proposed substitutions to the specifications made in the Interim Schematic Design.



**Appendix “C”**

**Energy Benchmark Table**

<b>Total Energy Summary</b>	<b>Proposed Discrete Energy Target (MJ)</b>
<b>Regulated Energy</b>	
Electricity	
Natural Gas	
Oil / Other	
Non-Regulated (electrical)	
<b>Aggregate Energy Target</b>	

Assumptions Made in Determining Aggregate Energy Target:

**[Project Co to insert required information]**

**SCHEDULE O**

**ARCHAEOLOGICAL, ABORIGINAL AND HERITAGE SITES**

1. Project Co shall comply with the Government of Ontario’s Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery (Appendix “1”) and the Cultural Heritage Protocol Agreement between the Ministry of Government Services & the Ministry of Culture & Communications (Appendix “2”), to the extent that either or both may be relevant to the performance by Project Co of its obligations under this Agreement.
2. The Guidelines and Protocol shall be deemed to be a supplement to, and not in substitution for, compliance with the requirements of the *Cemeteries Act*, the *Ontario Heritage Act*, the regulations under those Acts, and all other legislation applicable to the construction of the Project Facility.
3. Where in the Guidelines or Protocol a reference is made to “Toronto” or to any person or organization having jurisdiction in Toronto, that reference shall be construed to mean a reference to the Regional Municipality of Durham or the equivalent person or organization having corresponding jurisdiction in the Regional Municipality of Durham.

## **APPENDIX “1”**

### **BEST PRACTICE GUIDELINES FOR THE TREATMENT OF HUMAN SKELETAL REMAINS DISCOVERED OUTSIDE A LICENSED CEMETERY**

The attached document is a “best practices” guideline describing the procedures for the treatment of human skeletal remains discovered outside a licensed cemetery. It reflects an agreement among members of the various ministries and agencies involved in the resolution of such burials (i.e., First Nations Burial Committee of Toronto; Toronto Police Service; Ministry of Citizenship, Culture and Recreation; Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations; Ministry of Transportation; and The Office of the Chief Coroner) and reflects what is seen as the best practice.

The document is intended to serve as a guide to approval authorities as a discovery goes through the many different steps involved in a reburial to ensure that human remains are treated with respect and dignity and processed in a timely and efficient manner.

It is intended that this guide be reviewed periodically to reflect experiences with the topic. The signatories to this guideline have agreed to ensure that staffs within their jurisdictions have access to this guideline.

Should clarification be required, please refer to the Cemeteries Act (Revised) R.S.O.1990 or contact one of the signatories.

#### Signatories:

First Nations Burial Committee of Toronto  
Toronto Police Service  
Ministry of Citizenship, Culture and Recreation  
Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations  
Ministry of Transportation  
Office of the Chief Coroner

## **The Discovery of Human Remains - Best Practices**

### **Introduction**

The following is designed to assist all those involved in responding to and addressing discoveries of human skeletal remains outside of a licensed cemetery. The advice is presented as a series of best practices among the many overlapping interests and jurisdictions of several ministries, agencies, police services and other government bodies that are triggered when human skeletal remains are uncovered. This approach has been developed with the support and approval of the First Nations Burial Committee of Toronto. The practices outlined here are equally applicable to discoveries of human remains across Ontario.

These best practices support the existing regulatory and statutory mechanisms in Ontario. Responsibility for a burial passes through a number of jurisdictions (i.e., Police, Coroner, Cemeteries Regulation Section) and the intent of this document is to ensure this flow is effective and seamless. This information should be read along with the attached flow chart outlining the mandatory process to be followed under existing statutes. Although the flow chart describes the process as being linear, in many instances events can and do happen simultaneously.

### **A Note on Public Notification:**

Getting through the entire discovery and disposition process when human remains are found will see the authority of the issue shift among several agencies. As such, until all investigations have been carried out and the disposition resolved, formal press releases or contacting the media should only occur if all affected authorities have concurred (i.e. police, coroner and Cemeteries Registrar). In addition, after all investigations have been completed, the concerns of the landowner and group acting as representative for the deceased (e.g. First Nation), should be considered before media contact. Premature media notification, particularly prior to having accurate identification of the deceased, will lead to misinformation, misplaced concerns being raised, and potentially a hardening of attitudes. This can make a final disposition agreement more difficult to reach.

Any media interest should be directed to the agency that has authority over the burial site at the time of the media contact (i.e. police, Coroner's Office or Cemeteries Registrar). Media photography of the remains should be avoided: a publicly displayed photograph of skeletal remains is both disrespectful to the deceased and offensive to representatives for the deceased.

### **A Note on Archaeology:**

It is important to note that the discovery of human remains will occur in two basic contexts: either through accidental discovery by an individual in unexpected circumstances, or through discovery as part of an archaeological examination/excavation of a locale by a trained archaeologist, licensed by the Ministry of Citizenship, Culture & Recreation (MCzCR) under

the Ontario Heritage Act. In the latter case, the archaeologist will possess the skills, knowledge and expertise to assist both the police and coroner in determining the age of the interment, as well as to assist the landowner in generating the information the Cemeteries Registrar will require to determine the nature, extent and cultural affiliation of the persons buried. His or her presence at the front end of the discovery process will greatly aid all authorities in making quick and accurate determinations, and as such should be relied on as much as possible in such circumstances.

### **Under the Coroner's Act**

1. A person finding skeletal material may first contact staff in an agency other than the police or coroner (e.g. MCzCR or Ministry of Consumer & Commercial Relations [MCCR] staff). When that occurs, the person is to be immediately instructed to report the find to the local police or coroner. An appropriate contact list (e.g. Regional Coroner's offices) should be maintained by all agencies that may be first contacted about such a discovery.

2. When the police are first contacted they will attend the scene, protect the site and contact the local coroner. The coroner, or the police on behalf of the coroner, will conduct an investigation to determine if: a) the skeletal material is human and b) if the site represents a crime scene. The investigators will need to obtain all the information required to make a determination. However, efforts should be made at this stage to minimize site disturbance. All bone and associated grave goods still embedded in the ground should not be disturbed unless removal is essential for the coroner to make a determination. Poking, pulling, and digging up the bone in an uncontrolled manner can quickly destroy critical data essential to making accurate identifications.

3. Whenever possible, the police and coroner should seek the assistance of an archaeologist in conducting the investigation. This is especially critical since burials are archaeological deposits in their own right, and are often found as part of more extensive archaeological deposits. As such, confirming an association of the burial with a surrounding archaeological site will help determine whether or not the remains are part of a crime scene. Also, the archaeologist can help ensure that the larger heritage resource is not destroyed or damaged during investigation of the skeletal material. MCzCR staff can sometimes be called on to visit the scene with the police.

4. Archaeologists will consider issues such as the condition and discoloration of the bone, presence of artifacts around the discovery site, and knowledge of known archaeological sites in the area to determine chronological (and cultural) associations. If intact deposits are examined, features such as the presence/absence of a coffin, depth of remains, position, of body, presence of grave goods, etc., will also assist the determination.

5. When skeletal material is found and it is not readily obvious that this material is either a burial or crime scene, coroners will often employ the services of a physical anthropologist or osteologist to examine the bone in detail. While the coroner requires only a basic determination

of age (i.e. recent vs. historic/ancient) and nature of the interment, the physical anthropologist's study can also determine cultural affiliation (based on the presence/absence of specific skeletal traits), age of the individual at death, sex, and even funerary practices. This information will be essential for both the Cemeteries Registrar's investigation, as well as for the deceased's representative in determining the appropriate re-interment requirements. As such, latitude in allowing the physical anthropologist to complete a full, basic descriptive analysis of the skeletal material as a part of the coroner's investigation will greatly aid in addressing remaining issues associated with this process.

6. When the Coroner is satisfied the discovery site is not a crime scene, it is essential that he/she notifies the Registrar of Cemeteries of the discovery, and passes along any relevant information (e.g. contacts, results of any analyses, etc.). It is also essential that the landowner understand that he/she will need to preserve and protect the site from the point when the police are no longer involved, and until a disposition is made under the Cemeteries Act.

### **Under the Cemeteries Act**

1. Under the Cemeteries Act the Registrar will be required to determine and formally declare what the locale is: either an irregular burial site (unintentional interment), or an unapproved cemetery or unapproved Aboriginal Peoples cemetery. When the information is not already in hand (i.e. based on archaeological findings or the results of the coroner's investigation) the landowner normally will be required to undertake an investigation. Such an investigation will generate the information necessary for the Registrar to make an accurate declaration.

2. In most cases, such investigations will be undertaken by a licensed and qualified

archaeologist hired by the landowner. MCzCR ensures that the Cemeteries Registrar has a current list of such licensees which can be made available to the landowner.

3. The intent of the investigation is to provide the Cemeteries Registrar with, the data necessary to make a declaration. As such, burial investigations will minimize normal archaeological fieldwork and reporting requirements. It will be determined following the Registrar's declaration and disposition agreement reached between landowner and deceased's representative whether disinterment is necessary.

4. The investigation for the Registrar must determine whether or not the interment(s) were intentional, and the basis on which this is made, the cultural affiliation of the deceased, and the defined limits of the area containing burials, the style and manner in which the remains are interred, and a description of the artifacts determined to form part of the burial site. It may also be necessary to determine the exact number of discrete burials present in the area. Excavation methods should maximize recovery of this data, while minimizing disturbances to the remains. Recording should also be limited to that required by the Registrar (e.g. emphasis on mapping

location of burials in relation to property lines, existing structures, or other reference points). MCzCR will advise licensed archaeologists of the appropriate archaeological methods.

5. During the investigation, the remains must be treated with respect and care. All artifacts found in the burial are to be considered grave goods, and should be treated as part of the burial, and kept with the skeletal remains. Burials must not be unnecessarily exposed to the elements or to casual viewing, and must be covered over as soon as possible following identification. The landowner continues to be responsible for preserving and protecting the site during this investigation, and until a disposition is made under the Cemeteries Act.

6. At the conclusion of the investigation a report must be submitted to the Registrar. This report will need to include the information required in Point 4. For sites that date to the last 200 years, historical research (e.g. land title search, newspapers, local informant interviews, etc.) may be required to answer some of the information points outlined in Point 4. This report will also serve to address the archaeologist's reporting requirements for the license issued by MCzCR under the Ontario Heritage Act.

7. Once the Registrar can make a declaration, and the locale is determined to be an unapproved cemetery, he/she will locate a representative for the deceased. If the locale is an unapproved Aboriginal Peoples cemetery, the Registrar will contact the nearest First Nation Government. Another community of Aboriginal People whose members have a close cultural affinity to the interred person may also act as representative. As well, if agreed-to and established before-hand, a designated "Burials Committee" can serve as the first point of Aboriginal contact for the Registrar. If the burial is non-aboriginal, the Registrar will attempt to find a representative through media notification. Where no descendant is found, a representative of the same religious denomination as the person buried can act for the deceased.

8. The representative and landowner will agree to a disposition agreement outlining what is to be done with the burials. Where there is no agreement, binding arbitration is provided under the Cemeteries Act. Typically there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and reinter them in an existing cemetery. The option selected with respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery will be negotiated between the landowner and representative for the deceased.

9. If the discovery is declared to be an irregular burial site, there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and re-inter them into an existing cemetery. The landowner will decide which option and is responsible for all costs.

10. In respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery, if a disinterment/reburial option is selected, the burials will need to be fully uncovered, removed and reinterred with a minimum of damage and time. Costs associated with a disposition agreement will be negotiated by the landowner and representative. While the time it takes to

complete this work will be subject to the wishes of the landowner and representative, factors such as the number and nature of interments, level of observations required by the representative for re-interment purposes, etc., will affect the length of time needed to complete the removal and reinterment. Consequently, in order to minimize time while maximizing care and documentation, this work is best done by a licensed archaeologist under the direction of the disposition agreement.

11. During removal, detailed observations will need to be made of the archaeological context of the burial to ensure that all associated remains and grave goods are fully recovered. Age at death and sex of the individual should also be noted. This information will assist in determining the appropriate methods of re-interment, as well as to assist in determining what specific ceremonies need to accompany the reburial. Basic mapping can be used to aid in making these observations. No scientific analysis of the skeletal remains or grave goods can occur during this process without the consent of the representative of the deceased.

12. Should the disposition agreement impact on adjacent archaeological remains, or should concerns be raised for these deposits during negotiations, MCzCR will advise and work closely with the Cemeteries Registrar and others concerned to determine what is the most appropriate course of action. MCzCR will also assist in mediating any issues that might arise between the licensed archaeologist and other parties.

July 15, 1998



## APPENDIX “2”

### CULTURAL HERITAGE PROTOCOL AGREEMENT BETWEEN THE MINISTRY OF GOVERNMENT SERVICES & THE MINISTRY OF CULTURE & COMMUNICATIONS

#### Introduction

The Cultural Heritage Protocol is an agreement between the Ministry of Government Services (MGS) and the Ministry of Culture and Communications (MCC) concerning the development of a process for identifying and protecting cultural heritage resources affected by those MGS real property undertakings addressed in the MGS Parent Class Environmental Assessment (EA).

Effective July 1, 1991, the Protocol applies to Ontario Regulation 1/90 (MGS 1021, and is intended to continue under and in parallel with the functioning of the MGS Parent Class EA.

#### Cultural Heritage Resources

The following are cultural heritage resources based in real property:

- archaeological sites
- buildings and structural remains of historical, architectural and contextual value
- districts or landscapes of historic and scenic value in rural, village and urban contexts
- places which hold significance because of sacred value or long traditional use

#### MGS Responsibilities

As a purchaser, property owner or vendor, MGS is responsible for protecting the provincial interest in preserving its cultural heritage resources. As a tenant, MGS must not adversely affect cultural heritage resources on leased property.

#### Implementation Plan

MGS will implement the Protocol in two phases commencing before the implementation date of MGS Parent Class EA.

- **Phase 1** is a short-term assignment to be performed by consultants in 3 stages,
- **Phase 2** is an ongoing responsibility requiring permanent resources.

**Phase 1:**

This phase will be implemented in 3 stages as follows;

- A. MGS will retain a consultant to carry out the following steps :
1. Develop operational definitions of the cultural heritage resources listed above.
  2. Develop simple and effective criteria for determining whether or not a property has potential heritage significance.
  3. Prepare a list of available MGS, MCC and other government data sources for the recognition of cultural heritage resources.
  4. Identify and review existing guidelines; adopt/adapt relevant materials for MGS purposes, resulting in:
    - a. A Guideline for Appropriate Documentation indicating where, when, who, and to what extent documentation should be collected for buildings, groups of structures, structural remains, districts and landscapes.
    - b. An Evaluation System which can assess the significance of the resource being documented.
    - c. A Guideline for Maintenance, Repair and Alteration identifying appropriate means of carrying out changes, renovation, rehabilitation, restoration, or additions to structures which have heritage significance.
  5. Assemble a list of government and non-government consultative sources, based on the stakeholders listed below, for the four categories of cultural heritage resources.
  6. Develop heritage inventory forms which can be used by field staff and serve as the basis for a physical file.
- B. MGS will retain consultants on a regional basis to carry out the following steps;
1. Review additional non-government consultative sources, based on die stakeholders listed in Phase 2 “Evaluation Process”, for the four categories of cultural heritage resources.
  2. Review MGS buildings and identify the potential cultural heritage resources: note any heritage implications of pertinent MGS building sites and develop an interim listing.
  3. Document any immediate threats to die heritage features, and the implications the heritage features might have on future property management or development
- C. MGS will retain the consultant for Phase 1A to carry out the following step:

1. Review existing guidelines, as well as the “generic guidelines” developed in Phase 1A (step #4), and adopt/adapt relevant materials for MGS purposes, resulting in:
  - a. A Guideline for the Assessment of Archeological Sites indicating where, when and how to access.
  - b. A Guideline for Mitigative Measures relating to projects involving heritage structures. This would describe the appropriate means of dealing with unavoidable impacts and discuss relocation, moth balling, demolition and reassembly, screening, etc,
  - c. A Guideline for Compatible Development indicating appropriate ways to build new structures which are compatible with existing buildings, districts or landscapes.

## **Phase 2:**

This phase may commence before the completion of Phase 1, and will involve the following activities:

### **A. Evaluation Process**

Using the “generic guidelines” from Phase 1A (Step #4), MGS will carry out active evaluations for specific projects, involving the collection of any necessary data, to determine the significance, options and courses of action to be documented in evaluation reports,

For specific undertakings, MGS and MCC will evaluate potential cultural heritage resources in consultation with stakeholders:

- for archaeological sites:
  - contact MCC, Ministry of Natural Resources (MNR), aboriginal groups, historical societies
- for buildings and structural remains of buildings:
  - contact MCC, local architectural conservation advisory councils (LACACs). historical societies, local and regional municipalities
- for districts or landscapes of historic and scenic value in rural, village and urban contexts:
  - contact local and regional municipalities and LACACs;
  - for unorganized territories, contact MNR, Ministry of Municipal Affairs, aboriginal groups
- for places which hold significance because of sacred values or long traditional use:
  - contact aboriginal groups, local and regional municipalities

Upon approval of the MGS Parent Class EA, MGS will follow the consultation process outlined in the “Class EA Methodology” (Section 4),

B. Inventory

An inventory is required to capture and access heritage-related information. Based on the “interim listing” prepared as part of Phase IB (Step #2), any prevailing Information System will have fields to flag whether a property has, has not or may have heritage significance.

These “flags” must be cross-referenced to evaluation reports developed as part of the “evaluation process” which describe the heritage features in detail, identify immediate threats to them, and examine their potential implications on future property management or development.

The inventory will require ongoing maintenance, and must be readily available to MGS personnel.

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[REDACTED]

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[REDACTED]

## **SCHEDULE P**

### **PRE-COMPLETION COMMUNICATIONS PLAN**

#### **1. Definitions**

Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such items in the Agreement.

#### **2. General**

The Durham Consolidated Courthouse represents an important infrastructure commitment by the Province of Ontario and the Durham Region. Accordingly, a comprehensive communications and stakeholder relations plan is necessary to ensure the public is informed and engaged where necessary on design and construction developments. This plan will support effective communications between Project Co and HMQ and also with MAG stakeholders and the greater Durham Region community.

#### **3. *HMQ Responsibilities:***

##### **Lead Communications Role**

HMQ will assume the lead communications role. HMQ will take primary responsibility for all communications matters and will be responsible for performing the following functions:

- (a) Provide identified, dedicated lead communications contacts with applicable skills and experience with twenty-four (24) hours a day and seven (7) days a week availability on applicable aspects of communications and issues management;
- (b) Provide identified, dedicated media-trained lead media spokesperson, with back-up media trained personnel as required with twenty-four (24) hours a day and seven (7) days a week availability on applicable aspects of communications;
- (c) Primary media contact for the Project;
- (d) Provide final review and approval of all public communications materials;
- (e) Communicate promptly with all relevant parties on crisis issues and communicate within twenty-four (24) hours of general issues;
- (f) Maintain and update project web site, as required;
- (g) Provide updates to internal/external stakeholders, as required;
- (h) Providing a comprehensive program including print, web-based, and other elements describing and providing information about the Project as it proceeds;
- (i) Providing a community relations program and public consultation program to ensure two-way communication and problem-solving between Project Co and

HMQ and external stakeholder groups, neighbourhoods, city officials, and others regarding design and construction issues, public reporting and communications. Such actions may include community events and presentations to community groups;

- (j) Providing a media relations policy and protocol to be developed in cooperation with Project Co and HMQ and internal stakeholders;
- (k) For day to day, and more broadly, for each year of construction, public reporting to highlight and provide progress updates and information and how community issues have been considered and addressed throughout the year;
- (l) Provide required planning for potential crisis issues;
- (m) Facilitate communications between the parties involved in the Project and government bodies (municipal, regional, provincial, federal);
- (n) Court-related communications: all communications related to the provision of Courthouse Activities; and
- (o) Providing periodical review of Project Co's performance in providing communications as set out in Section 4 of this Schedule.

**4. *Project Co Responsibilities:***

- (a) In connection with public communications matters, Project Co shall:
  - (i) Within 30 days of the Date of Agreement, develop, maintain and implement a construction liaison and communications plan. The plan is to be updated annually, and reviewed and approved by HMQ. The plan shall provide:
    - (A) a description of Project Co's approach to all communications aspects in respect of the Project;
    - (B) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Subcontractors who will provide any aspect of the communications program; and
    - (C) identification of proposed communication tools (e.g. types of information, materials, website, audio-visual, presentations, events) to be used to keep the community informed, and a schedule for implementation as the Project progresses.
  - (ii) Attend regular meetings with HMQ to discuss communication issues and developments and monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues and actions taken in response to issues. Project Co shall provide notice of

any media releases or other public communications as permitted pursuant to Section 51.11 of the Agreement and HMQ shall be entitled to approve media releases and public communications information to provide a fair and accurate release of information in a coordinated fashion;

- (iii) Engage in communications with the immediately affected property owners and neighbourhoods on design and construction related issues with particular attention to communicating the scope, schedule and status of the construction program. This will include processes to proactively address any work related enquiries and issues (e.g., public enquiries, complaints re. noise, hours of work, dust, etc.)
  - (iv) Provide management information for the management of local and regional traffic during the construction process;
  - (v) Establish and maintain construction project information line, with voice mail capability, and construction-related information posted to agreed-to websites;
  - (vi) Develop a plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the period. This plan shall be developed jointly with, and be acceptable to, HMQ;
  - (vii) Work with HMQ to develop a public consultation program to ensure two-way communication and appropriate input between Project Co and HMQ and external stakeholder groups, neighborhoods, city officials, and others regarding design issues related to the Project, public reporting and communications. Such actions may include community events and presentations to community groups; and
  - (viii) Follow directives provided by HMQ on any signage or advertising on the construction site at the Project Facilities.
- (b) Project Co shall, at all times, comply with the terms of the Agreement in relation to communication matters generally.

**SCHEDULE Q**

**CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 1<sup>st</sup> day of March, 2007

**BETWEEN:**

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent  
for HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

("HMQ")

**AND:**

**ACCESS JUSTICE DURHAM LTD.**, a corporation incorporated under the laws of Ontario

("Project Co")

**AND:**

**PCL CONSTRUCTORS CANADA INC.**, a corporation incorporated under the laws of Alberta

(the "Construction Subcontractor")

**AND:**

**PCL CONSTRUCTION GROUP INC.**, a corporation incorporated under the laws of Alberta

(the "Construction Guarantor")

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Subcontractor and the Construction Guarantor to enter into, this Construction Contractor's Direct Agreement with HMQ.
- B. Project Co and the Construction Subcontractor have entered into the Construction Subcontract, which requires the Construction Subcontractor and the Construction Guarantor to enter into this Construction Contractor's Direct Agreement with HMQ.

**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) "**Approved Purposes**" means following termination of the Project Agreement or as otherwise provided therein, HMQ's rights and obligations under the Project Agreement, performing (or having performed) the Project Operations, including the design or construction of the Project Facilities and the operation, maintenance or improvement of the Project Facilities, and other operations or services the same as, or similar to, the Project Operations in connection with the Project Facilities and the Site.
- (b) "**Business Day**" has the meaning given in the Project Agreement.
- (c) "**Construction Guarantor**" means PCL Construction Group Inc.
- (d) "**Construction Subcontract**" has the meaning given in the Project Agreement.
- (e) "**Construction Subcontractor**" means PCL Constructors Canada Inc.
- (f) "**Co-ordination Agreement**" has the meaning given in the Project Agreement.
- (g) "**Crown**" has the meaning given in the Project Agreement.
- (h) "**Default Notice**" has the meaning given in Section 5(a).
- (i) "**Governmental Authority**" has the meaning given in the Project Agreement.
- (j) "**HMQ**" means Her Majesty the Queen in right of Ontario, as represented by the Minister of Public Infrastructure Renewal.
- (k) "**Party**" means HMQ, the Construction Subcontractor, the Construction Guarantor or Project Co and "**Parties**" means HMQ, the Construction Subcontractor, 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 date hereof between HMQ and Project Co, as the same may be amended from time to time in accordance with its terms.
- (n) "**Project Co**" means Access Justice Durham Ltd.
- (o) "**Senior Lenders**" has the meaning given in the Project Agreement.
- (p) "**Step-In Notice**" has the meaning given in Section 6(a).
- (q) "**Subcontractors**" has the meaning given in the Project Agreement.

(r) "Substitute" has the meaning given in Section 6(a).

## 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, 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 Oshawa, 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**

In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Construction Subcontract and the Co-ordination Agreement, this Construction Contractor's Direct Agreement shall prevail.

### **4. Agreements**

- (a) Project Co and the Construction Subcontractor shall not amend, modify, or depart from the terms of the Construction Subcontract or the Co-ordination Agreement without the prior written consent of HMQ, acting reasonably, which consent shall not be withheld 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 HMQ, whether actual or potential. Project Co and the Construction Subcontractor shall provide to HMQ a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Changes provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement, the Construction Subcontract and the Co-ordination Agreement.
- (c) If the Construction Subcontractor gives Project Co any notice of any default(s) under the Construction Subcontract that may give the Construction Subcontractor a right to terminate the Construction Subcontract and the Co-ordination Agreement or to treat them as having been repudiated by Project Co or to discontinue the Construction Subcontractor's performance thereunder, then the Construction Subcontractor shall concurrently provide HMQ with a copy of such notice and set out in reasonable detail the default(s).

## **5. No Termination by Construction Subcontractor without Default Notice**

The Construction Subcontractor shall not exercise any right it may have to terminate the Construction Subcontract and the Co-ordination Agreement or to treat them as having been repudiated by Project Co or to discontinue the Construction Subcontractor's performance thereunder unless:

- (a) the Construction Subcontractor first delivers a written notice (a "**Default Notice**") to HMQ setting out in reasonable detail the default(s) on which the Construction Subcontractor intends to rely in terminating the Construction Subcontract and the Co-ordination Agreement or to treat them as having been repudiated by Project Co or to discontinue the Construction Subcontractor's performance thereunder; and
- (b) within a period ending 5 Business Days after the Construction Subcontractor notifies HMQ of the expiry of any relevant period for the exercise of step-in or similar rights by the Senior Lenders, or if the Senior Lenders have no such step-in or similar rights, then 5 Business Days after the later of OPIC receiving the Default Notice or the expiry of the applicable cure period under the Construction Subcontract the Construction Subcontractor has not received a Step-In Notice from HMQ, provided that if, within such period of 5 Business Days, HMQ agrees to pay the Construction Subcontractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

## **6. Step-In Rights**

- (a) HMQ may at any time:
  - (i) within a period ending 45 days after the Construction Subcontractor notifies OPIC of the expiry of any relevant period for the exercise of step-in or similar rights by the Senior Lenders, or if the Senior Lenders have no

such step-in or similar rights, then within 45 days after the later of OPIC receiving the Default Notice or the expiry of the applicable cure period under the Construction Subcontract; or

- (ii) if HMQ'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 Subcontract and the Co-ordination Agreement either with HMQ or a third party designated by HMQ in the Step-In Notice (the "**Substitute**"), provided that HMQ can demonstrate to the Construction Subcontractor, 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 Subcontract and the Co-ordination Agreement.

- (b) Subject to Section 6(d), upon receipt by the Construction Subcontractor of a Step-In Notice:

- (i) Project Co and the Construction Subcontractor will be deemed to be released from their existing and future obligations under the Construction Subcontract and the Co-ordination Agreement to each other (except with respect to any and all indemnities from Project Co or the Construction Subcontractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the Construction Subcontractor 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 Subcontractor under the Construction Subcontract and the Co-ordination Agreement and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Subcontractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the Construction Subcontractor 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 Subcontractor to HMQ if HMQ pays for the Construction Subcontractor's reasonable costs of continued performance pursuant to Section 5;
- (iii) subject to the next following sentence, any guarantee, bond or covenant 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 Subcontractor to be performed, observed or carried out by the Construction Subcontractor as contained in, referred to, or inferred from the Construction Subcontract and the Co-ordination Agreement shall be assigned, novated or granted, as required by HMQ or the Substitute, as

applicable, each acting reasonably, to HMQ or the Substitute, as applicable, and the Construction Subcontractor shall, to the extent permitted pursuant to their terms, cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Construction Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co. If any guarantee, bond or covenant in favour of Project Co from any third party, as described in the immediately preceding sentence, is not capable, pursuant to their terms, to be assigned, novated or granted to HMQ or the Substitute (as applicable), then any such guarantee, bond or covenant shall be replaced by Project Co and granted in favour of HMQ on substantially the same terms and conditions as the original guarantee, bond or covenant; and

- (iv) at HMQ's request, the Construction Subcontractor shall enter into, and shall either (a) cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, or (b) obtain a replacement guarantor, covenantor or surety under a guarantee, bond or covenant satisfactory to HMQ, and HMQ 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 HMQ or the Substitute, as applicable, and the Construction Subcontractor, acceptable to HMQ and the Construction Subcontractor, each acting reasonably, on substantially the same terms as the Construction Subcontract and the Co-ordination Agreement.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ and the Substitute in order to achieve a smooth transfer of the Construction Subcontract and the Co-ordination Agreement to HMQ or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Subcontract and the Co-ordination Agreement, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and (c) shall be of no force or effect if, at any time the Construction Subcontractor receives a Step-In Notice, the Construction Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Subcontract and the Co-ordination Agreement that it is or has validly exercised those step-in rights. If the Construction Subcontractor 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 Senior Lenders, in which case such other notice and not the Step-In Notice shall be effective.

- (e) If HMQ gives a Step-In Notice in accordance with the terms of this Construction Contractor's Direct Agreement, within the time provided hereunder, at any time after the Construction Subcontractor has terminated the Construction Subcontract and the Co-ordination Agreement or treated them as having been repudiated by Project Co or discontinued the Construction Subcontractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Subcontractor agrees that the Construction Subcontract and the Co-ordination Agreement shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the Construction Subcontractor will, if required to do so by notice served by HMQ no later than 45 days after HMQ has delivered the Step-In Notice, enter into a new contract with HMQ or the Substitute, as applicable, acceptable to HMQ and the Construction Subcontractor, acting reasonably, on substantially the same terms as the Construction Subcontract and the Co-ordination Agreement. HMQ shall pay the Construction Subcontractor's reasonable costs for re-commencing the obligations it has under the Construction Subcontract and the Co-ordination Agreement and the Construction Subcontractor 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 Subcontract and the Co-ordination Agreement or having treated them as being repudiated by Project Co or having discontinued its performance thereunder.

## **7. Construction Subcontractor Liability**

- (a) The liability of the Construction Subcontractor 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 HMQ, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by HMQ of any other person to review the progress of or otherwise report to HMQ 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 HMQ,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Subcontractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event HMQ delivers a Step-In Notice, the Construction Subcontractor shall have no greater liability to HMQ or any Substitute than it would have had to Project Co under the Construction Subcontract and the Co-ordination Agreement, and the Construction Subcontractor shall be entitled in any proceedings by HMQ or any Substitute to rely on any liability limitations in the Construction Subcontract and the Co-ordination Agreement.

## **8. Project Co as Party**

Project Co acknowledges and agrees that the Construction Subcontractor shall not be in breach of the Construction Subcontract and the Co-ordination Agreement by complying with its obligations hereunder.

## **9. Construction Guarantor as Party**

The Construction Guarantor agrees with HMQ 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 as provided therein, including any conditional assignment, novation or grant as provided therein, 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 HMQ, 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) HMQ shall not assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement other than to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement in accordance with the terms of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Subcontractor of such assignment or disposition.
- (c) The Construction Subcontractor shall not, without the prior written consent of HMQ, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement or the Co-ordination Agreement except to an approved subcontractor in accordance with the Project Agreement.

## **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, facsimile or by hand, as follows:



If to HMQ: c/o Ontario Infrastructure Projects Corporation  
777 Bay Street, 9<sup>th</sup> Floor  
Toronto, ON M5G 2C8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co: 79 Wellington Street West  
Suite 1500  
Maritime Life Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1G8

Fax No: [REDACTED]

Attn.: President

And to: Babcock & Brown LP  
2 Harrison Street, 6<sup>th</sup> Floor  
San Francisco CA 94105

Fax No.: [REDACTED]

Attn: Treasurer

If to the Construction Subcontractor: 2085 Hurontario Street  
Suite 400  
Mississauga, ON L5A 4G1

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Construction Guarantor: 5410 99 Street  
Edmonton, Alberta T6E 3P4

Fax No.: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile 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 Section 11(d)(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 facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (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 facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile 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 facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission 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 such 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**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 Construction Contractor's Direct Agreement.

**20. 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.

**21. 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 the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Construction Contractor's Direct Agreement which was so faxed.

**22. HMQ 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 HMQ under this Construction Contractor's Direct Agreement (including, without limitation, review of all documentation submitted by Project Co, the Construction Subcontractor and/or the Construction Guarantor, engage in discussions, consultations and meetings with Project Co, the Construction Subcontractor and/or the Construction Guarantor, submitting notices and documentation to HMQ, issuances of notices and/or documentation by HMQ and related matters) and Project Co, the Construction Subcontractor 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 and other administrative matters and decisions determined by such designated Person from time to time, until the Crown has notified Project Co and the Construction Subcontractor in writing that OIPC is no longer the person designated by HMQ 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 Construction Subcontractor 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

Subcontractor and the Construction Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 22.

**IN WITNESS WHEREOF** the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

**ONTARIO INFRASTRUCTURE  
PROJECTS CORPORATION, as agent for  
HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**ACCESS JUSTICE DURHAM LTD.**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**PCL CONSTRUCTORS CANADA INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**PCL CONSTRUCTION GROUP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**SCHEDULE R**

**SERVICE PROVIDER'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 1<sup>st</sup> day of March, 2007

**BETWEEN:**

**ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent  
for HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**("HMQ")**

**AND:**

**ACCESS JUSTICE DURHAM LTD.**, a corporation incorporated under the laws of Ontario

**("Project Co")**

**AND:**

**JOHNSON CONTROLS L.P.**, a limited partnership formed under the laws of Ontario

**(the "Service Provider")**

**AND:**

**JOHNSON CONTROLS, INC.**, a corporation incorporated under the laws of Wisconsin

**(the "Service Guarantor")**

**WHEREAS:**

- A. HMQ 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 HMQ.
- B. Project Co and the Service Provider have entered into the Operating Subcontract, which requires the Service Provider and the Service Guarantor to enter into this Service Provider 's Direct Agreement with HMQ.

**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) "**Approved Purposes**" means following termination of the Project Agreement or as otherwise provided therein, HMQ's rights and obligations under the Project Agreement, performing (or having performed) the Project Operations, including the design or construction of the Project Facilities and the operation, maintenance or improvement of the Project Facilities, and other operations or services the same as, or similar to, the Project Operations in connection with the Project Facilities and the Site.
- (b) "**Business Day**" has the meaning given in the Project Agreement.
- (c) "**Co-ordination Agreement**" has the meaning given in the Project Agreement.
- (d) "**Crown**" has the meaning given in the Project Agreement.
- (e) "**Default Notice**" has the meaning given in Section 5(a).
- (f) "**Governmental Authority**" has the meaning given in the Project Agreement.
- (g) "**HMQ**" means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure Renewal.
- (h) "**Operating Subcontract**" has the meaning given in the Project Agreement.
- (i) "**Party**" means HMQ, the Service Provider, the Service Guarantor or Project Co and "**Parties**" means HMQ, the Service Provider, the Service Guarantor and Project Co.
- (j) "**Project**" has the meaning given in the Project Agreement.
- (k) "**Project Agreement**" means the project agreement made on or about the date hereof between HMQ and Project Co, as the same may be amended from time to time in accordance with its terms.
- (l) "**Project Co**" means Access Justice Durham Ltd.
- (m) "**Senior Lenders**" has the meaning given in the Project Agreement.
- (n) "**Service Guarantor**" means Johnson Controls, Inc.
- (o) "**Service Period Works**" has the meaning given in the Project Agreement.
- (p) "**Service Provider**" means Johnson Controls L.P.
- (q) "**Step-In Notice**" has the meaning given in Section 6(a).



- (r) **"Subcontractors"** has the meaning given in the Project Agreement.
- (s) **"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, 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 Oshawa, 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**

In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider's Direct Agreement, the Project Agreement, the Operating Subcontract and the Co-ordination Agreement, this Service Provider's Direct Agreement shall prevail.

### **4. Agreements**

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Operating Subcontract or the Co-ordination Agreement without the prior written consent of HMQ, acting reasonably, which consent shall not be withheld 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 HMQ, whether actual or potential. Project Co and the Service Provider shall provide to HMQ a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Changes provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement, the Operating Subcontract and the Co-ordination Agreement.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Operating Subcontract that may give the Service Provider a right to terminate the Operating Subcontract and the Co-ordination Agreement or to treat them as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder, then the Service Provider shall concurrently provide HMQ 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 Operating Subcontract and the Co-ordination Agreement or to treat them 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 HMQ setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Operating Subcontract and the Co-ordination Agreement or to treat them as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder; and
- (b) within a period ending 30 days after the Service Provider notifies HMQ of the expiry of any relevant period for the exercise of step-in or similar rights by the Senior Lenders, or, if the Senior Lenders have no such step-in or similar rights, then 30 days after the later of HMQ receiving Default Notice or the expiry of the applicable cure period under the Operating Subcontract the Service Provider has not received a Step-In Notice from HMQ, provided however that until such time as HMQ gives the Service Provider a notice that HMQ will not give a Step-In Notice, HMQ shall pay the Service Provider's reasonable costs of continued performance.

## **6. Step-In Rights**

- (a) HMQ may at any time:
  - (i) within a period ending 30 days after the Service Provider notifies HMQ of the expiry of any relevant period for the exercise of step-in or similar rights by the Senior Lenders, or if the Senior Lenders have no such step-in or similar rights, then within 30 days after the later of HMQ receiving Default Notice or the expiry of the applicable cure period under the Operating Subcontract; or

- (ii) if HMQ'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 Operating Subcontract and the Co-ordination Agreement either with HMQ or a third party designated by HMQ in the Step-In Notice (the "**Substitute**"), provided that HMQ 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 Operating Subcontract and the Co-ordination Agreement.

- (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 Operating Subcontract and the Co-ordination Agreement 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 HMQ or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except with respect to any and all indemnities) from Project Co in favour of the Service Provider in respect of the period prior to the receipt of the Step-In Notice));
- (ii) the existing and future rights of Project Co against the Service Provider under the Operating Subcontract and the Co-ordination Agreement 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 HMQ or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except with respect to any and all indemnities from Project Co in favour of the Service Provider in respect of the period prior to the receipt of the Step-In Notice), provided however that to avoid duplication of payment to the Service Provider, HMQ shall be credited the amount that HMQ paid pursuant to Section 5 for the Service Provider's reasonable costs of continued performance;
- (iii) subject to the next following sentence, any guarantee, bond or covenant 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 Operating Subcontract and the Co-ordination Agreement shall be assigned, novated or granted, as required by HMQ or the Substitute, as applicable, in each case acting reasonably, to HMQ or the Substitute, as applicable, and the Service Provider shall, to the extent permitted pursuant

to their terms, cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co. If any guarantee, bond or covenant in favour of Project Co from any third party, as described in the immediately preceding sentence, is not capable, pursuant to their terms, to be assigned, novated or granted to HMQ or the Substitute (as applicable), then any such guarantee, bond or covenant shall be replaced by Project Co and granted in favour of HMQ on substantially the same terms and conditions as the original guarantee, bond or covenant; and

- (iv) at HMQ's request, the Service Provider shall enter into, and shall either (a) cause the Service Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into; or (b) obtain a replacement guarantor, covenantor or surety under a guarantee, bond or covenant satisfactory to HMQ, and HMQ 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 HMQ or the Substitute, as applicable, and the Service Provider, acceptable to HMQ and the Service Provider, acting reasonably, on substantially the same terms as the Operating Subcontract and the Co-ordination Agreement.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ and the Substitute in order to achieve a smooth transfer of the Operating Subcontract and the Co-ordination Agreement to HMQ or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Operating Subcontract and the Co-ordination Agreement, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and (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 Operating Subcontract and the Co-ordination Agreement 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 Senior Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If HMQ gives a Step-In Notice in accordance with the terms of this Service Provider's Direct Agreement within the time provided hereunder at any time after

the Service Provider has terminated the Operating Subcontract and the Co-ordination Agreement or treated them 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 Operating Subcontract and the Co-ordination Agreement shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the Operating Subcontractor will, if required to do so by notice served by HMQ no later than 45 days after HMQ has delivered the Step-In Notice, enter into a new contract with HMQ or the Substitute, as applicable, acceptable to HMQ and the Service Provider, acting reasonably, on substantially the same terms as the Operating Subcontract and the Co-ordination Agreement. HMQ shall pay the Service Provider's reasonable costs for recommencing the obligations it has under the Operating Subcontract and the Service Provider shall be entitled to reasonable compensation and/or relief for recommencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Operating Subcontract and the Co-ordination Agreement or having treated them 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 HMQ, or by any failure or omission to carry out any such inspection, investigation or enquiry;
  - (ii) the appointment by HMQ of any other person to review the progress of or otherwise report to HMQ 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 HMQ,

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 HMQ delivers a Step-In Notice, the Service Provider shall have no greater liability to HMQ or any Substitute than it would have had to Project Co under the Operating Subcontract and the Co-ordination Agreement, and the Service Provider shall be entitled in any proceedings by HMQ or any Substitute to rely on any liability limitations in the Operating Subcontract and the Co-ordination Agreement.

## **8. Project Co as Party**

Project Co acknowledges and agrees that the Service Provider shall not be in breach of the Operating Subcontract and the Co-ordination Agreement by complying with its obligations hereunder.

## **9. Service Guarantor as Party**

The Service Guarantor agrees with HMQ 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 as provided therein, including any conditional assignment, novation or grant as provided therein, 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 HMQ, 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) HMQ shall not assign or otherwise dispose of the benefit of the whole or part of this Service Provider's Direct Agreement other than to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement, 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 HMQ, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider's Direct Agreement or the Co-ordination Agreement, except to an approved subcontractor in accordance with the Project Agreement.

## **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, facsimile or by hand, as follows:

If to HMQ: c/o Ontario Infrastructure Projects Corporation  
777 Bay Street, 9<sup>th</sup> Floor  
Toronto, ON M5G 2C8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co: 79 Wellington Street West  
Suite 1500  
Maritime Life Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1G8

Fax No.: [REDACTED]

Attn.: President

And to: Babcock & Brown LP  
2 Harrison Street, 6<sup>th</sup> Floor  
San Francisco CA 94105

Fax No.: [REDACTED]

Attn: Treasurer

If to the Service Provider: 7400 Birchmount Road  
Markham, Ontario L3R 5V4

Fax No.: [REDACTED]

Attn.: Corporate Controller

If to the Service Guarantor: X-40  
5757 North Green Bay Avenue  
Milwaukee, Wisconsin 53209

Fax No.: [REDACTED]

Attn.: Corporate Treasurer

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile 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(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 be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving 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 facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile 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 facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**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 Service Provider's Direct Agreement.

**20. 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.

**21. 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 the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Service Provider's Direct Agreement which was so faxed.

**22. HMQ 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 HMQ under this Service Provider's Direct Agreement (including, without limitation, review of all documentation submitted by Project Co, the Service Provider and/or the Service Guarantor, engage in discussions, consultations and meetings with Project Co, the Service Provider and/or the Service Guarantor, submitting notices and documentation to HMQ, issuances of notices and/or documentation by HMQ and related matters) 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 and other administrative matters and decisions determined by such designated Person from time to time, until the Crown has notified Project Co and the Service Provider 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 and the Service Provider in writing of any designation hereunder. The rights and obligations of the parties to this 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 22.

**IN WITNESS WHEREOF** the Parties have executed this Service Provider's Direct Agreement as of the date first above written.

**ONTARIO INFRASTRUCTURE  
PROJECTS CORPORATION, as agent for  
HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

**ACCESS JUSTICE DURHAM LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**JOHNSON CONTROLS U.L.C.,** in its capacity as general partner of **JOHNSON CONTROLS L.P.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**JOHNSON CONTROLS, INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**SCHEDULE S**  
**KEY INDIVIDUALS**

**A. Key Individuals – Project Works**

	<b>Project Co Party</b>	<b>Position</b>	<b>Name and Contact Information</b>
1.		Site Superintendent	[REDACTED]
2.		Construction Manager	[REDACTED]
3.		Project Co Project Manager	[REDACTED]
4.		Project Co Representative	[REDACTED]
5.		Project Co Representative	[REDACTED]

**B. Key Individuals – Service Period Works**

<b>Position</b>
Safety Officer
Building Services Manager
Quality Assurance Manager
Project Co Representative

**SCHEDULE T  
PROJECT SCHEDULE**

**[REDACTED]**

**SCHEDULE U  
SITE AGREEMENT**

See the Attached.



**SITE AGREEMENT**

This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 2007.

Between:

**Ontario Infrastructure Project Corporation, as Agent for  
Her Majesty the Queen in Right of Ontario  
("OIPC")**

- and -

**Access Justice Durham Ltd.  
("Project Co")**

**WHEREAS:**

- A. OIPC and Project Co wish to forthwith enter into a Project Agreement (the "**Project Agreement**") regarding the design, construction, operation and maintenance of a new courthouse in Oshawa, Ontario and the financing of such activities;
- B. OIPC and Project Co are aware that the Site was contaminated with Pre-Existing Site Contamination and that certain reclamation activities were being undertaken by the City of Oshawa, Ontario to remove the Pre-Existing Site Contamination and the activities undertaken in connection with the removal of soils contaminated with Pre-Existing Contamination from the Site have resulted in an actual grade of the Site which is significantly lower than the elevations set forth in the Survey (collectively, the "**Over-excavation**");
- C. As a result of the Over-excavation, certain Compaction Work (as defined below) which had not been included in the Project Schedule or Project Works must be completed (the "**HMQ Change**") so as to enable Project Co to proceed with the Project;
- D. OIPC has requested that Project Co carry out the Compaction Work, and Project Co has agreed to carry out the Compaction Work, all in accordance with the terms and conditions set forth in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the mutual covenants set forth herein, OIPC and Project Co agree as follows:

## 1. Pre-Amble and Defined Terms

The pre-amble forms part of this Agreement. In this Agreement capitalized words and phrases shall have the meaning ascribed to them in the Project Agreement unless otherwise defined herein. In addition, the following terms have the following meanings:

- (a) “**Actual Delay**” has the meaning ascribed to it in Section 3(d)(v).
- (b) “**Agreement**” means this agreement together with any schedules attached hereto;
- (c) “**Audit**” has the meaning given to it in Section 4(a) below;
- (d) “**Compaction Work**” means all work required to bring the grade of the Site to the elevations of the proposed sub grade of the building basement slabs, which activities include, but are not limited to:
  - (i) the placement of engineered fill to the proposed subgrade elevations of the building basement slab and compaction of engineered fill to design proctor densities;
  - (ii) if required, the supply and installation of a structural slab for the basement of the Project instead of the non-structural slab on grade set forth in the Project Agreement;
  - (iii) the testing and inspection of the work set forth above in this Section 1(d); and
  - (iv) if required, acceleration of the Project Works;
- (e) “**Compaction Work Price**” means the price for the Compaction Work (plus GST) determined in accordance with Section 3(a);
- (f) “**Consultant’s Report**” has the meaning ascribed to it in Section 4(a);
- (g) “**Contractor’s Architect**” has the meaning ascribed to it in the Construction Subcontract;
- (h) “**HMQ Change**” has the meaning ascribed to it in Recital C;
- (i) “**Oshawa Permitting Issues**” has the meaning given to it in Section 3(a) below;
- (j) “**Over-excavation**” has the meaning ascribed to it in Recital B;
- (k) “**Registry**” has the meaning given to it in Section 4(a) below;
- (l) “**Replacement RSC**” has the meaning ascribed to it in Section 4(b);

- (m) “RSC” has the meaning ascribed to it in Section 4(a);
- (n) “Slab Milestone Date” has the meaning given to it in Section 3(c) below;
- (o) “Slab Delay” means the delay to the Project Schedule determined in accordance with Section 3(d)(ii) below;
- (p) “Slab Work” has the meaning given to it in Section 3(c)(ii) below;
- (q) “Slab Work Completion Date” has the meaning given to it in Section 3(d)(i) below;
- (r) “Standards” has the meaning given to it in Section 4(a) below;
- (s) “Survey” means the survey dated May 8, 2006 which was posted by OIPC on Buzzsaw; and
- (t) “TCE” has the meaning given to it in Section 4(a) below.

## 2. Reliance by Project Co

OIPC acknowledges and agrees that Project Co is relying on this Agreement in agreeing to execute and deliver the Project Agreement and that this Agreement shall be binding upon each of them following the execution and delivery of the Project Agreement notwithstanding Section 51.8 of the Project Agreement.

## 3. HMQ Change

- (a) Project Co has provided a preliminary estimate for the Compaction Work in the amount of \$[REDACTED] plus G.S.T. Such estimate was predicated upon, among other things, (i) The City of Oshawa promptly issuing a backfill permit at no additional cost; and (ii) The City of Oshawa relaxing the noise by-laws to allow continuous work on site, as necessary (collectively, the “Oshawa Permitting Issues”). Project Co and OIPC shall use commercially reasonable efforts to (i) agree upon the cost of the HMQ Change (with the parties attempting to achieve the most cost effective solution to the HMQ Change and based on the principle that the Construction Subcontractor shall be in no better or no worse position had the HMQ Change not occurred), and (ii) agree upon the action plan and scope of work with respect to such HMQ Change. The parties agree that time is of the essence, that the Compaction Work is critical in nature and that the Compaction Work must be completed on an expedited basis. Forthwith following agreement by the parties as to the scope of the Compaction Work (or at any time prior thereto), OIPC has the option to do the following:
  - (i) direct the Independent Certifier, if appointed by such date, to propose in writing within a period of 5 Business Days therefrom

the cost and, if the parties have not otherwise agreed on the scope of work, the scope of work, for the Compaction Work, which proposal shall not be binding upon the parties. If one of the parties does not accept the proposal (or the Independent Certifier has not been appointed), and the scope of work has been otherwise agreed to, then the cost of the Compaction Work shall be in the amount of and paid in accordance with Section 3(a)(ii); or

- (ii) pay to Project Co on a monthly progress payment basis all of the Direct Costs incurred by Project Co and its Subcontractors in completing the Compaction Work and the margins for profit and overhead set out in Section 10.4(b) of the Project Agreement. Project Co shall deliver to OIPC and the Independent Certifier an invoice and all reasonable supporting documentation for the Compaction Work on a monthly basis and the Independent Certifier shall certify to OIPC and Project Co that the work referred to in the invoice has been completed and shall verify the Direct Costs and margins relating thereto. If the Compaction Work Price is determined in accordance with this Section 3(a)(ii), then the guaranteed maximum price based on the agreed scope of work (other than payment for any contingencies that occur and are expressly provided for therein (including the Oshawa Permitting Issues) and the provisions of the Project Agreement otherwise applicable), for the HMQ Change shall be the price presented by Project Co (acting reasonably and in good faith) to HMQ for HMQ's approval after the scope of the work for the HMQ Change has been determined.
- (b) During the period from the Date of Agreement to the completion of the Compaction Work, OIPC shall pay to Project Co the Compaction Work Price on a progress payment basis as such costs are incurred. Project Co will submit invoices on or before the last day of each month of such period. The Contractor's Architect must, within five Business Days of receipt of such invoice, confirm to Project Co, HMQ and the Independent Certifier whether the Compaction Work performed since the last monthly statement and since commencement of the work to carry out the HMQ Change are consistent in a material manner with the performance requirements in the scope of work agreed to for the HMQ Change and are consistent in a material manner with the HMQ Design Requirements. The Independent Certifier shall certify to OIPC and Project Co within five Business Days of its receipt of the invoice and the Contractor's Architect certificate that the relevant portion of the Compaction Work referred to in the invoice has been completed and, if applicable, verifying the Direct Costs and margins relating thereto. Within 30 days following OIPC's receipt of the certificate from the Independent Certifier, the amount set out in the invoice shall be paid by OIPC. The parties agree that the

Compaction Work Price represents the costs of Project Co and its Subcontractors only if the Oshawa Permitting Issues are satisfied.

- (c) The Project Schedule contemplates that the milestones scheduled to be completed by Project Co by November 21, 2007 (the “**Slab Milestone Date**”) include (i) Pour Slab on Grade [Tower and North Package]; and (ii) Form plus pour walls and columns to Second Floor [Tower] (collectively, the “**Slab Work**”). The Slab Milestone Date does not include the Slab Work to be completed by Project Co by reason of the HMQ Change. Project Co will use all commercially reasonable efforts to complete the Slab Work on or before the Slab Milestone Date.
- (d) If, despite having used all commercially reasonable efforts, Project Co is not able to complete the Slab Work on or before the Slab Milestone Date, then:
  - (i) Project Co shall continue using all commercially reasonable efforts to complete the Slab Work as soon as reasonably possible. The date on which Project Co actually completes the Slab Work (as certified by the Independent Certifier) shall be referred to herein as the “**Slab Work Completion Date**”;
  - (ii) The parties and the Construction Subcontractor shall, within the period of 30 days after the later to occur of the Slab Work Completion Date, the delivery of the Consultant’s Report or the filing of a Replacement RSC (if such filing is determined to be required in accordance with Section 4(b)), conduct a critical path analysis and determine (A) the impact, if any, on the Project Schedule equal to the number of days of delay to the original Planned Completion Date caused by the HMQ Change (including as the result of the Oshawa Permitting Issues and other contingencies provided for in the scope of work agreed to for the HMQ Change) and any delays reasonably attributable to the TCE (and the remediation thereof) or, if applicable, the determination made under Section 4(b) that the filing of a Replacement RSC is required, in each case, as described in Section 4(b) (collectively, the “**Slab Delay**”), and (B) the amount of the Compensation Event as contemplated in Section 3(d)(iii) (which determination or failure to so determine under paragraphs (A) or (B) under this Section 3(d)(ii) shall be subject to the Dispute Resolution Procedure under the Project Agreement);
  - (iii) If it is determined by the parties that there is a Slab Delay, the parties agree that there shall be determined to exist (A) an HMQ Delay Event in accordance with Article 25 of the Project Agreement and, in accordance with Section 25.2(d), the Planned Completion Date shall be extended by the number of days of the

Slab Delay, and (B) a Compensation Event in an amount to ensure that Project Co is in no better and no worse position in relation to the Project than it would have been in if the Slab Delay had not occurred;

- (iv) Project Co shall perform its obligations under the Project Agreement (including its obligation to mitigate pursuant to Section 25.3 of the Project Agreement) to achieve Completion by the Planned Completion Date. If Project Co does not achieve Completion by the original Planned Completion Date, then the parties agree that OIPC shall pay to Project Co as a lump sum payment on the original Planned Completion Date the amount of the Compensation Event as determined in accordance with Section 3(d)(ii) and (iii); and
- (v) In the event that compensation has been paid to Project Co in accordance with Section 3(d)(iv) and the Completion Date is a date earlier than the original Planned Completion Date plus the period of the Slab Delay (the “**Actual Delay**”), OIPC shall be entitled to set-off such compensation paid against other payments due to Project Co on a pro-rated basis for each day by which the Slab Delay was greater than the Actual Delay.
- (e) If Project Co achieves Completion by the original Planned Completion Date, then no amount referred to in Section 3(d)(iv) shall be payable hereunder.
- (f) The HMQ Change, and the amounts payable by OIPC in connection therewith, shall not be included within the Change Threshold Amount; rather, all amounts referred to herein shall be paid by OIPC as set out herein.
- (g) Project Co agrees to use commercially reasonable efforts to obtain funding to finance the HMQ Change on terms acceptable to OIPC and Project Co each acting reasonably (which terms shall include the terms of repayment by OIPC of such funding). If Project Co is unable to obtain funding or the parties are unable to agree upon the terms thereof within 45 days after Financial Close, then OIPC shall be obligated to make the payments for such HMQ Change in accordance with this Section 3.
- (h) Project Co acknowledges and agrees that the Compaction Work shall be carried out in accordance with Good Industry Practice, in accordance with the performance specifications agreed to in the scope of work for the HMQ Change and in a manner which is consistent with the HMQ Design Requirements.

#### 4. Site Contamination

- (a) Notwithstanding that Record of Site Condition #11117 (the “**RSC**”), which was filed in respect to the Site on the Ministry of the Environment’s Environmental Site Registry (the “**Registry**”) on February 12, 2007, states that the Site meets the applicable full depth generic site condition standards for residential property use prescribed by Ontario Regulation 153/04 for Hazardous Substances (the “**Standards**”), OIPC acknowledges and agrees that the Ministry of the Environment’s audit of Record of Site Condition #11117 dated February 21, 2007 (the “**Audit**”) identified Contamination at the Site in excess of the Standards. More particularly, OIPC acknowledges and agrees that the Audit (i) identified trichloroethylene in groundwater at the Site in excess of the Standards, and (ii) raised potential concerns with respect to the Environmental Consultant’s verification groundwater samples regarding trichloroethylene at the Site (collectively, the “**TCE**”). As a result, OIPC acknowledges and agrees that the TCE is Pre-Existing Site Contamination. OIPC shall cause the Environmental Consultant to promptly: (i) remediate the TCE, and (ii) deliver a report confirming that the Site meets the Standards (the “**Consultant’s Report**”), which report may be relied upon by Project Co, the Construction Subcontractor, the Senior Lenders and ABN AMRO Bank N.V. Canada Branch in its capacity as Issuing Bank to Project Co under the Debt Service Reserve Letter of Credit Agreement dated as of March \_\_\_\_, 2007.
- (b) In consequence of: (i) the TCE (and the remediation thereof) and/or (ii) in order to be in compliance with Applicable Law, the requirement to file a replacement RSC as the result of the Audit (a “**Replacement RSC**”), OIPC acknowledges and agrees that the Project Schedule may be delayed (for various reasons including, without limitation, delays in obtaining the necessary approvals, permits and licenses). In the event that the TCE (and the remediation thereof) and/or the need to obtain a Replacement RSC delays the Project Schedule, then any such delays shall be considered in accordance with Section 3(d)(ii) in determining if a Slab Delay has occurred.

## 5. **Environmental Indemnity**

For greater certainty, provided that Project Co has not otherwise recovered an amount from OIPC in respect of the same claim under this Agreement, the Project Agreement or otherwise, nothing herein shall affect the ability of Project Co to make claim pursuant to the indemnity provided to it in Section 21.6 of the Project Agreement.

## 6. **General**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province 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) This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.
- (c) Any notice given or required to be given by either party to the other pursuant to this Agreement will be given in accordance with the terms of the Project Agreement.
- (d) Save as expressly provided otherwise, the parties will pay interest on any amount payable under this Agreement not paid on the due date, from the period from and including that date to but excluding the date of payment at a rate equal to the Default Interest Rate.
- (e) This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their successors and assigns.



IN WITNESS whereof this Agreement has been duly executed.

**ONTARIO INFRASTRUCTURE  
PROJECTS CORPORATION, as agent for  
HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**

Per: \_\_\_\_\_

**ACCESS JUSTICE DURHAM LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**SCHEDULE V  
FOOD SERVICES FACILITIES PLAN**

**[REDACTED]**